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RECOLLECTIONS & REFLECTIONS

AN AUTOBIOGRAPHY

ILLUSTRATED



CHIMANLAL H. SETALVAD

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PREFACE

The idea of publishing my reminiscences originated on board the S. S. Narkunda in December 1931, when myself and some other delegates to the Second Round Table Conference were returning to India. One afternoon at lunch, Sir Cowasji Jehangir, Sir Purshottamdas Thakurdas, Mr. G. N. Joshi and myself were talking about law and law courts and I narrated to them some of my experiences and recalled certain notable occasions on which the High Court and its predecessor the Supreme Court protected the liberty of the subject. My friends assured me that my reminiscences of the Bar would be very interesting and they desired that I should write them. When I reflected on the suggestion I felt that I could not confine myself to the field of law and that my reminiscences should extend to various other spheres of public activity in which I had taken part for many years—the University, the Municipal Corporation, legislatures and politics.

I soon realised the very arduous nature of the task for two reasons. I had no recorded diaries, nor any regular file of letters and papers. It meant taxing my memory to recall incidents and experiences extending over a period of more than five decades and further there was the difficulty of verifying my recollections by reference to available records and other sources. I naturally hesitated to take up the work. But some of my friends prevailed upon me not to give up the idea. Mr. G. N. Joshi often reminded me about it and so did Mr. (now Justice) M. C. Chagla. Sir Sajba Rangnekar as recently as 1941 very kindly offered to be my biographer if I furnished him with the relevant material. This was, of course impossible in view of the non-existence of connected documents or recorded notes. Therefore, the only alternative left was to attempt the task myself. I am conscious of the shortcomings of the production under the circumstances and I crave the indulgence of the reader for

the same. It has been remarked that writing reminiscences can be a dangerous occupation. I have scrupulously tried to avoid pitfalls and it has taken me nearly two years to give effect to the suggestion so kindly made by my friends. My narrative includes an unvarnished story of a busy and active life embracing different fields of activity apart from the legal profession and contains my own views of men and matters during the most eventful and exciting period of the history of the motherland. My consolation is that I have always served my country according to my lights and without malice to any one. If the readers think that on the whole—barring inevitable and unconscious mistakes—I have produced a realistic and instructive record of my life I shall feel amply rewarded.

I take this opportunity to thank several friends in the various branches of the legal profession who have assisted me in the verification of facts and events. Mr. G. N. Joshi was particularly helpful to me. My thanks are due to Mr. Frank Moraes of the *Times of India* who went through the tedium of correcting a part of the proofs.

Last but not least my grateful thanks are due to Mr. V. R. Bhende, Assistant Secretary of the National Liberal Federation but for whose devoted, sincere and intelligent help during the whole period of the preparation of this volume, I would never have been able to produce it.

Bombay,

C. H. SETALVAD

February 1, 1946

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1. - - - - - EARLY LIFE

I WAS born in July 1865 in the City of Broach. This is a statement based on hearsay and therefore inadmissible in evidence, according to a learned judge who declined to make a note of what a witness deposed about his age on the ground that the witness could have no personal knowledge about it.

My grandfather Ambashankar, after serving as Sherastadar in the Sadar Divan Adalat at Bombay rose to be Principal Sadar Amin at Ahmedabad. In that office, he acquired great reputation as a judge. Some years after I had been admitted as an Advocate on the Original Side, Mr. Bhulabhai Desai after having argued an appeal on the Appellate Side came to me in the High Court Library and said "We had to consider in an appeal a judgment which your grandfather had delivered at Ahmedabad on a point of *res judicata*, and would you believe me, that judgment was a perfect exposition of the law on that subject." My father also took up law and became a Subordinate Judge. On his retirement from that office he became Dewan of the State of Limbdi in Kathiawar.

My first recollections go back to the seventies of the last century when I attended school at Umreth in the Kaira District where my father was Subordinate Judge. Umreth was in those days typical of many small Indian towns whose inhabitants regulated their social economy in a remarkably efficient manner. The population consisted principally of Brahmins, Baniyas and Kunbis, mostly engaged in agriculture, money-lending and trade in various parts of India. They practised rigid economy and frugal living. When it was found that people were spending too much on marriages, various communities resolved that all marriages should be celebrated within a period of a

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few days in the year which was to be fixed by the Panchayet. Thus, every family celebrating a marriage would, according to custom, invite the whole caste to dinner but there being a large number of marriages falling on the same day, the diners would be divided, and each host would have to provide dinner for only a few people, being their close relations, while getting the credit of having invited the whole caste.

When Government wanted to establish a Municipality for the town, the whole town objected. Their plea was that a Municipality would make roads and put up lights in the streets at night, but since they mostly took their meals in the evening early and as far as possible avoided lighting in their own houses for economy, they did not see the utility of lights in the streets. Public opinion against unnecessary expenditure was so strong that Mr. Goculdas Kahandas Parekh, a prominent Pleader in the High Court who was wealthy and whose native place was Umreth, could not permit himself to keep a horse and carriage in Umreth lest thereby he set a bad example of unnecessary expenditure.

Umreth people were against the B.B. & C.I. Railway extending their line to their town from Anand which is twenty miles away and further to Dakore where there is the shrine of Ranchhodraiji to which thousands of pilgrims resort every year. They did not want the peace of their country-side to be disturbed. When ultimately the Railway was extended to Umreth and Dakore, Umrethians continued as before to walk all the six miles to Dakore and would not use the Railway. They were against the establishment of any factories in their town and when some one wanted to put up a ginning factory the masons, carpenters and labourers would not erect the factory. The Umrethians of those days had anticipated the Gandhian philosophy of no machinery, no railways, boycott and non-co-operation. Mr. Gandhi was then in his cradle.

Elphinstone Coll
16. 12. 90

My Dear Mr. Setalvad

I accept with great

pleasure your extremely taste-
ful and handsome present,
and shall cherish it as
a memorial of one of
my most esteemed pupils,
and a valued friend.

Wishing you all happiness and
prosperity, both here and
hereafter. Believe me most
truly & affectionately yours

W. Lawrence

After my father was transferred to Ahmedabad, I studied at the High School there and having passed my Matriculation Examination, joined the Elphinstone College in Bombay at the beginning of 1880. The Elphinstone College was then situated opposite the Victoria Gardens at Parel. There was provision for resident students on the second floor of the College and I became a resident student. Wordsworth, a grandson of the Poet Wordsworth, was the Principal.

While at College, I came into close contact with three persons and this association largely moulded my character and influenced my outlook on life. Foremost among them was Principal Wordsworth. He had a great personality and his active sympathy for Indians and their aspirations evoked general admiration. He was a profound scholar of literature and history, and it was real liberal education to attend his lectures. His open advocacy of the Ilbert Bill and his support to the Indian National Congress movement will be referred to in a later chapter.

After I finished my University education and began practising as a lawyer, I continued contact with this great Professor and friend of India. On the eve of his retirement in 1890 the Honorary Doctorate of Law was conferred upon him by the University of Bombay. On that occasion his past and present pupils escorted him in a torch-light procession from the University Hall to his residence as a mark of their respect and admiration. I was one of those who joined that procession. At the time of his retirement, I presented him with a silver writing set. The letter which, he wrote to me in acknowledgement I have treasured ever since.

Wordsworth died in the year 1918 and I referred to him in my address as Vice-Chancellor at the Convocation of the University of Bombay in the following terms:—

“Dr. Wordsworth has gone to his last resting place in the historic city of Rome near the spot where

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Keats and Shelley rest, but his teaching and example will always inspire the minds of the youth of this land with that robust patriotism which he did so much to create and stimulate, and his attributes and conduct will always evoke genuine admiration for the nobility of the British character which he so eminently typified in himself."

Further, I quoted the following remarkable observation which the late Dr. Wordsworth had made at a meeting of the Senate:

"The Indian people, by the counsels of Providence have been brought into contact, I would rather say, into partnership with the most restless, progressive and enterprising nation of Europe—a people who have their very being in liberty and free discussion, and whose example is so contagious that it affects all who come within its sphere. Deliberately and without craven fear, we have invited the youths of India to study our history and our literature. We have permeated them with our ideas, and held up ourselves as a worthy example for their imitation. We have done all this, and, can we now imagine that it is possible to retain a people whom we have thus aroused, stimulated and enlightened, in the leading strings appropriate to a time which has for ever passed away?"

The second person who influenced me was the late Dr. Moreshwar Gopal Deshmukh who was then Assistant Chemical Analyser to the Government. His father Gopal Hari Deshmukh who was at one time Small Causes Court Judge at Ahmedabad was a friend of my father. Dr. Deshmukh in order to qualify himself for the M. D. examination, was keeping terms at the Elphinstone College for the B.Sc. degree. I came in contact with him at the College and our acquaintance grew into close friendship which lasted till his death in 1928. Dr. Deshmukh was a man of very simple

habits, of large sympathies, specially for the poor and of deep patriotism.

The third person was the late Prof. T. K. Gajjar. We came together in the residency of the Elphinstone College, soon became close friends and remained so till his death. For many years we shared the same residence in Bombay. Prof. Gajjar was a great scientist specially in the field of Chemistry. In October 1896 the beautiful marble statue of Queen Victoria on the Esplanade was disfigured by some one who threw tar on the face. All attempts to remove the stains failed and it was contemplated to remove the head and substitute a new one. Prof. Gajjar then came forward to clear the stains and he succeeded marvellously in doing so. Prof. Gajjar set a great example of hard work and devotion to science. He discovered a process of bleaching yellow-stained pearls and this process is still used. Above all, he was a man of generous instincts and deep human sympathies. His son Dr. K. T. Gajjar is now a renowned Pathologist in Bombay.

After I took my B. A. degree, my father was desirous that I should enter Government service. What was called the Statutory Indian Civil Service had been at that time created. A certain proportion of the total number selected by examination in London for the Indian Civil Service was recruited in India by nomination. Dr. Wordsworth recommended me for such nomination and we understood that the Government of Bombay sent up the recommendation to the Government of India. The Government of India, however, inaugurated a new policy about these nominations. They decided that instead of direct nomination suitable persons from the provincial civil service should be nominated to the I.C.S. It was then suggested that if I entered the Revenue Department as a graduate recruit under the rules in that behalf, after a short interval Government might appoint me Deputy Collector and then I could be taken into the Statutory Civil Service.

My own inclination was throughout against entering Government service and my strong desire was to take to law and practise in the High Court. I had, however, much against my will, to defer to the wishes of my father. I was appointed Treasury Karkun on a salary of Rs. 30/- a month at Sanand in the Ahmedabad District. I worked as such for four days. Every morning, I went by train to Sanand and returned in the evening. I spent in railway fare alone every day twice the salary I earned. At the end of four days, I decided to resign and go to Bombay for the study of law. Without informing my father about this decision I went straight to the Collector who was a friend of my father and handed him my resignation. He tried to persuade me not to resign but finding me firm about it, he asked me to put in an application for a year's leave without pay and go in for law so that at the end of the year, I could finally decide. I put in the application then and there and the leave was granted. I then told my father what I had done and contrary to my apprehension he was not angry about it. I then came to Bombay and began reading for the LL.B. examination.

My desire to take to the legal profession had been much stimulated by the stories that I had heard from my father as well as from Nanabhai Haridas (afterwards a Judge of the Bombay High Court) and Dhirajlal Mathuradas, Government Pleader in the High Court who used to visit my father. They spoke about the achievements of outstanding lawyers in Bombay and about the great independence and solicitude for the liberty of the subject which the High Court and its predecessor, the Supreme Court, displayed and in this connection particular reference in detail was made to three noteworthy cases.

I had heard of the advocacy of Mr. Anstey in the sensational libel case in which Karsondas Moolji, a great social reformer of those days who exposed the misdeeds of a Gosaiji Maharaj (a high priest of Vaishnavas), was sued.

for defamation. Sir Joseph Arnold who heard the case held the allegations to be proved and dismissed the suit. Anstey was at one time a Member of Parliament and had proved a thorn in the side of the Government of Lord Palmerston. They sent him out as Attorney-General in Hongkong where he quarrelled with the Judges and he then came to Bombay to practise. He was considered a great jurist and an effective Advocate and attracted to himself very large practice. Anstey was very hot tempered and had on occasions passages at arms with the judges. It was said that he once insulted a solicitor and thereupon the solicitors as a body decided not to brief him. He then appeared instructed directly by a client and argued for two days that he was entitled to do so. The Court decided against him. Thereupon, he got a friend who was practising as a solicitor in Madras to come and get enrolled in Bombay. The result was that this solicitor attracted the bulk of the work as parties desired Anstey to be briefed and the other solicitors would not brief him. Within a short time the solicitors realised to their cost that it did not pay to quarrel with Anstey and they compromised with him.

As it may interest readers to know what happened in the three cases that had made so deep an impression on me, I am shortly summarising the facts as gathered from authorised reports.

In the first case, Sir Edward West, the Chief Justice of the Supreme Court, and Sir Peter Grant and Chambers, Judges, had issued writs of *habeas corpus* for the production of one Moro Raghunath who was alleged to have been kept in custody in Poona and of Bapu Ganesh who was detained in the Thana Jail. The Governor and Members of Council thereupon sent a letter signed by themselves to the Court requesting that the Court should not take any further action in the matter. On the assembling of the Court, the Judges ordered the Clerk of the Crown to

record Government's letter and ordered that a reply be sent to Government that no notice could be taken of their letter "as it was most unconstitutional for Government to approach the Court not by petition or by motion by themselves or by Counsel in open Court, that being the only way in which for the wisest purposes the law permits Judges to be addressed." They animadverted upon the attempt of Government to induce the Judges for reasons of State policy to refrain from administering justice according to what they deemed to be law, and the Court re-issued the writs.

The Judges then petitioned the King in Privy Council about the matter. Soon afterwards Sir Edward West and Chambers died and Sir Peter Grant was the only surviving Judge of the Supreme Court. As the Executive refused to obey the writs, Grant on April 1, 1829, declared that the Court had ceased to function on all its sides and would remain closed until it received an assurance that its authority would be accepted. The Privy Council ultimately decided that as Moro Raghunath was at Poona and Bapu Ganesh was at Thana, the Supreme Court had no jurisdiction to issue writs. Although the Court was ultimately found to be wrong on the merits of the Order, it maintained and established the principle that the Executive were not entitled to sit in judgment on the validity of the Orders of the Court and disobey them but should resort to the remedy of appeal to the Privy Council (1 Knapp's Report, Privy Council, page 1).

The second case was that of the *Queen vs. Kashinath Dinkar and others* in 1871 which was decided by a full bench consisting of Chief Justice Westropp and Melville, Green, Lloyd and Campbell, Justices.

The accused were convicted by Mr. Pritchard, Magistrate in Khandesh and Nasik, for having abetted the causing of evidence of the commission of offences to disappear with the intention of screening the offenders. The offend-

ers to be screened were the accused themselves, i.e., they had caused to disappear evidence of the offences they themselves were alleged to have committed. At the trial the accused confessed their guilt. On appeal to the Sessions Judge, the conviction and sentence were confirmed. On an application for revision made to the High Court, a Division Bench expressed the view that the section of the Penal Code under which they were charged applied only to causing disappearance of evidence relating to an offence committed by somebody else. In the course of the hearing, it was urged that the confession of the accused had been extorted by cruel and revolting practices with the approval of the trying Magistrate, Mr. Pritchard, and that the prisoners at the bar were prevented from consulting their pleaders. It was further urged that these allegations were before the Judge in a petition in writing presented by the pleader of the accused but that the Judge had taken no notice of them.

The Division Bench decided that in order to enable them to dispose of the appeal finally, the circumstances under which the confessions were made should be investigated and reported to them by the Sessions Judge. At the consequent enquiry held by the Sessions Judge, Mr. Pritchard, the trying Magistrate was, at the suggestion of the Judge, appointed by the District Magistrate to appear as Public Prosecutor. The accused were examined on solemn affirmation and several witnesses were also called to corroborate their statements. While the enquiry was still pending and witnesses on behalf of the Crown had still to be examined, the Sessions Judge on the application of Mr. Pritchard gave sanction for the prosecution for perjury of two of the accused and one of the witnesses who had been examined for the accused, and one of them was actually tried during the pendency of the enquiry. The Sessions Judge adjourned for one or two days the enquiry directed by the High Court in order to facilitate the prose-

cution of that witness and to allow Mr. Pritchard to attend to it. For the purposes of the enquiry before the Judge, Mr. Pritchard applied for summonses to call as witnesses Mr. Anstey and Mr. Shantaram Narayan who had appeared as Counsel and Pleader for the accused before the Division Bench of the High Court and the summonses required them to produce their briefs and the instructions given to them by their clients.

Mr. Shantaram Narayan on whom the summons was served in time appeared and objected to disclosing any instructions that he had received from his clients. The summons on Mr. Anstey was served so late that it was impossible for him to appear at Dhulia. As Mr. Anstey did not appear, Mr. Pritchard applied to the Sessions Judge to issue attachment against him but the Sessions Judge had the good sense to refuse. The Sessions Judge in making his report referred to and relied upon certain personal communications, partly verbal and partly in the shape of a private note sent to him by Mr. Pritchard. The Full Bench in their judgment observed:

“The appointment of Mr. Pritchard as Crown Prosecutor, he having been the Magistrate who tried the case, was the most improper and singular proceeding. To convert the Judge as an Advocate seeking to uphold his own decision before another tribunal is, so far as we know at least in the annals of British Jurisprudence, quite unprecedented, and most objectionable as he has a personal interest in the case, which a Public Prosecutor should not have.”

They further said that they were astonished that the Judge should have suggested the appointment of Pritchard as Public Prosecutor and that the District Magistrate should have acted on the Judge's proposal. They went on to observe:—

“We deeply regret that Mr. Pritchard should have so far forgotten his duty towards the prisoners, the



public and the Court as to apply to the Sessions Judge (not only before the result of the enquiry was made known to this Court and the case finally disposed of by it on the evidence then and previously taken, but before the enquiry itself had terminated) for permission to prosecute before an inferior tribunal, Govind Narayan, Sri Narayan and one of their witnesses in respect of the evidence given by them, and the truth of which was to be considered by this Court and again we are more surprised and more grieved to find that the Sessions Judge so little knew his duty as to grant that permission."

The Full Bench criticised the conduct of Mr. Pritchard in accusing the pleaders of having come to his camp to tout for clients, a taunt which should not under the circumstances have been uttered by a Magistrate. The High Court also strongly disapproved of the manner in which Pritchard conducted the original trial for a period of six weeks at different places, at long distances, at the hottest season of the year. Then the Full Bench referred to the summonses issued to Anstey and Shantaram Narayan. They said that it was evident that the object of Pritchard in serving the summonses was to get discovery of the instructions given by their clients. Such instructions, they declared, the Counsel, Attorney or Pleader was not at liberty to disclose without the consent of the clients. The Court further observed :

"It is not desirable that Magistrates whose decisions are under appeal or who have been engaged in prompting the prosecution, and officers of Police concerned in the case at the hearing, should sit beside or near the Judge or should converse with him and we consider the verbal communications and notes which passed between the Magistrate and the Judge in this case highly irregular, and if such a practice be persisted in, as calling for serious notice." (8 B.H.C.R. Cr.C. 126.)

EARLY DAYS AT THE BAR

WHEN I was enrolled as a pleader on the Appellate Side of the High Court in February 1887, I did not know any of the pleaders then practising except Vasudeo Jagarnath Kirtikar whom my father knew and to whom he had given me a letter of introduction. When I saw Vasudeo Kirtikar he received me very kindly and whenever I sought his advice and guidance, he readily gave it. Vasudeo Kirtikar was the maternal grand-father of M. F. Jayakar.

Soon after I began practice as a pleader I came into contact with Pherozez Shah Mehta whose great example of public service, generated in me the desire to serve my country and this affected the whole of my future career. I worked under his leadership in the Congress, the legislature, Municipal Corporation and the University, till his death in 1915. I used almost every evening to meet him. He dominated the public life of the country for over forty years and by his great intellect and selfless work gathered round him a large number of co-workers. Our relationship ripened into personal friendship and mutual respect. In the year 1899 on his return from a visit to England, he wrote to me a letter which I felt proud to receive.

When I plunged into the various public activities abovementioned in addition to legal practice, I was warned by several friends that law was a jealous mistress and that if I diverted part of my time and energies to public work, I would suffer in my profession. I however took the risk. Later on when I exposed in the Legislative Council certain grave abuses in the High Court administration, warnings were given to me that I would thereby incur

the displeasure of the Judges. I again took the risk and followed the path of duty. What those abuses were and how it took many years of hammering in the Bombay Legislative Council to eradicate them, the reader will find in the part 'Legislatures.'

When I joined the Appellate Side Bar, my idea was to qualify as an Advocate with a view to practice on the Original Side. In those days one had to attend the Appellate Side Courts for one year and the Original Side Courts for another year before being allowed to sit for the Advocate's Examination. The examination was considered a stiff one. As in the beginning I had more leisure I was able to keep the terms. After I had completed the keeping of terms, however, I gave up the idea of appearing for the Advocate's examination.

I was led to this decision by two considerations. Firstly, I felt that in order to get on on the Original Side, it was necessary that one should be known to the solicitors in Bombay and I being a mofussil man had not that advantage. On the other hand, having connections in mofussil towns like Ahmedabad, Surat and Broach, it was more easy for me to get appellate work. Secondly, I understood that Indian practitioners on the Original Side did not get much encouragement. In those days most of the leading solicitors' firms were wholly European in their composition and they naturally preferred to brief European barristers. The clients too preferred European barristers to conduct their cases because they somehow believed that a European Barrister would carry more weight than an Indian before European Judges.

There were seven Judges in all and there was among them only one Indian who, invariably sat on the Appellate Side. Moreover, many of the clients of those days not knowing the English language were entirely dependent on managing clerks through whom they contacted the solicitors, and the managing clerks of that generation had marked

26 Feb. 98

My dear Churcillal

Will you accept
the accompanying set
as a little memento of
my visit to England
to one whose public
spirit I have learned
to appreciate.

Dear & when you
are feeling I
take up G.

Yours sincerely
Charles L. M. Phelps

preference for European Barristers. There were no doubt some Indian practitioners like Badruddin Tyabji, Pheroze-shah Mehta and K. T. Telang who had made good progress but even they were not so much in demand as the European Barristers. In the above circumstances, I was persuaded to give up for the time being the idea of becoming an advocate.

I had however always in my mind the desire to practise on the Original Side and availed myself of the opportunity to fulfil that desire as soon as it presented itself. In the year 1896 the office of the Chief Judge of the Small Causes Court fell vacant and there was a technical difficulty in the way of appointing as Chief Judge, Rustomji Patel who was the second Judge. He was a Pleader and the Act required that the Chief Judge should be a Barrister or Advocate. In order to get over this difficulty the High Court Judges were induced to enact a rule that a pleader of ten years' standing who had ceased practice for one year could, at the discretion of the Judges of the High Court, be admitted as an advocate. Immediately after passing this rule, the High Court admitted Rustomji Patel as an Advocate and he was appointed Chief Judge. The condition of ceasing practice for one year was evidently put in to discourage practising pleaders from applying under the rule while it imposed no impediment in the way of Rustomji Patel because while he was a Judge of the Small Causes Court, he had ceased practising for many years.

Mr. Macpherson, a leading practitioner on the Original Side, whom I was instructing in various appeals on the Appellate Side, suggested to me the desirability of my taking advantage of this rule and of getting enrolled on the Original Side. I accordingly saw Chief Justice Farran and expressed to him my desire to take advantage of the new rule. He said it would be a good thing if I took the contemplated step and he assured me that the Judges would be glad to admit me as an advocate. I accordingly gave

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notice to the Registrar of the Appellate Side of my intention to apply under the rule and ceased practice for one year. A little time before the expiry of the year Sir Charles Farran died and Parsons was appointed to act as Chief Justice. I sent in my application and I promptly received a reply from the Prothonotary that the Chief Justice and Judges had been pleased to admit me as Advocate. After myself, two persons, namely H. C. Coyaji and Dinsha Mulla took advantage of this rule and were admitted as Advocates. Subsequently, the rules were relaxed by omitting the condition of ceasing practice for one year and the Judges have admitted several pleaders of ten years' standing as Advocates.

When I began practice on the Original Side, I found that a sneaking preference for European practitioners and want of encouragement to Indian practitioners still lingered. I can never forget how a Judge treated me on one occasion. I was arguing a point before him and he was putting forward his objections to the same in a manner which showed he had not properly grasped my argument. He suddenly said rudely: "Mr. Setalvad, you do not seem to understand English." I was naturally much annoyed by this rudeness. I rejoined "I understand English as well as Your Lordship does but my misfortune is that I have failed to make you understand the point that I am making."

An Indian solicitor who had briefed me in an important case was holding a conference with me. After I had explained to him how I was going to put our case, he said: "If your skin were as fair as your arguments, I would have been sure of success." Racial prejudice and discrimination rapidly wore out with more and more Indians coming into the front rank of practitioners on the Original Side and by the encouragement that Sir Lawrence Jenkins gave to them. When one evening in 1906 Craigie, the Senior partner in Messrs. Craigie, Lynch & Owen, a leading firm of Solicitors walked into my Chamber and delivered to me a

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heavy brief in a case that lasted two months before Justice Beaman and marked the fees I mentioned, I realised that the ghost of racial prejudice had been buried once for all at least as far as the legal profession was concerned.

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SARGENT & WEST

WHEN I was enrolled as pleader, Sargent was Chief Justice, and he and Nanabhai Haridas, a Pleader, who was the first permanent Indian Judge, sat in the first Appellate Court and Raymond West and Birdwood, both Civilians, sat in the second Appellate Court. The three Original Side Courts were presided over by Bailey and James Scott, Barristers, and John Jardine, a Civilian. Sargent had succeeded Westropp who had made a great name as an able and independent Judge. Sargent was clear headed and his judgments were to the point and couched in simple language. West was a jurist and scholar who had made a deep study of Roman Law and comparative Jurisprudence. He was also learned in Hindu Law and the two volumes on Hindu Law by West and Buhler, Professor of Sanskrit at the Deccan College, Poona, were in those days cited as authority. West was in the habit of using high flown and involved language quite in contrast with the simple language of Sargent.

I remember an incident which illustrates this contrast. A pleader was arguing before Sir Charles Sargent and another Judge a civil revision application and in support of his contention cited a judgment of West about the revisional powers of the High Court. In that judgment occurred the expression "the extrinsic conditions of the Court's legal activity." Sargent scratched his head and repeated this expression twice. Then he laughed as he sometimes used to do and said "I suppose Mr. Justice West means by this expression 'jurisdiction'."

Sir Charles Sargent retired in the year 1895 after sitting on the Bench as a Puisne Judge for 16 years and as

Chief Justice for 13 years. On his retirement, a public meeting of the citizens of Bombay was held at which Pheroza Shah Mehta presided and in his speech said: "The Bombay High Court has been singularly fortunate in being able to show a roll of Judges and Chief Justices who have been distinguished for great and unusual culture, capacity and learning. In this illustrious roll, none has more worthily sustained the great traditions of the high and responsible position of Judge and Chief Justice as Sir Charles Sargent had done for the last thirty years." A Committee was appointed to raise a fund for a suitable memorial. After his retirement, I met him in London in 1899. He died in the following year.

Some days after I joined the Appellate Side Bar, I was struck by the beautiful head of hair that West had. I noticed that he came into the court room invariably with a top hat on his head and walked so covered up to the steps of the dais, and then handed over the hat to his *chopdar* before ascending the steps of the dais. I could not understand why he did that. Being curious I enquired from some of my seniors and they told me that West was bald, that the head of hair was merely a wig he was wearing, and that once while he was entering the court room, a gust of wind blew off the wig and that ever since he always came with his hat on and took it off just near the dais.

JUSTICE BIRDWOOD

Birdwood was another member of the Bench who had distinguished himself as a very independent and able judge. Birdwood knew and spoke the Gujarati language very well. Once he was on a holiday at Matheran. He used to walk with a little swing. One day while he was walking on the hill some Parsi youths whom he passed on the way said amongst themselves in Gujarati. "Here is a drunken man walking along." Birdwood turned back and spoke to

them in Gujarati મનસની ગવસની ડુનસની (which is the Parsi formula for oath) મેં ખરેખર દાઝ પીધો નથી ("I tell you truly. I am not drunk.") The Parsi lads were taken aback and beat a hasty retreat. Lord Birdwood the former Commander-in-Chief of India is Justice Birdwood's son. Whenever he met me he wanted me to talk to him about his father and his work as High Court Judge and Member of Council. When Birdwood was member of Council, I was in the Bombay Legislative Council and we worked together on various Select Committees. After his retirement, we used to correspond.

JUSTICE PARSONS

When Birdwood was appointed a member of the Executive Council of the Governor of Bombay, Parsons succeeded him in the High Court. Although in the beginning, he was impatient and hasty, he improved almost every day and proved to be a very efficient judge. I remember two incidents which must have had a sobering influence on him. Shantaram was arguing an appeal and Parsons said "Your argument comes to this, that it is so because it must be so and it must be so because it is so." Shantaram retorted "We are not accustomed to be spoken to in this manner. You will have to drop this manner of talking to pleaders."

On another occasion, while a pleader was arguing a particular point before Jardine and Parsons the latter impatiently said that there was nothing in the point and asked him to go to the next point. Jardine intervened and said "Please complete your argument. I do not make up my mind without fully hearing pleaders."

Parsons was averse to many authorities being cited and would apply his mind to the words of an enactment and come to a conclusion. Once on the Original Side, Latham, the Advocate-General, had before him on the table a long array of authorities. Parsons said "Why do you want all these authorities for a point which is simple

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enough to my mind?" Latham rejoined "I know your Lordship has contempt for authorities but it is necessary for my purpose to cite them."

Once he heard a long case about a Mill Company which took 40 hearings. Macpherson who was for the plaintiff took over two days to give his final reply. At the end of his reply, Parsons at once began to read his judgment which he had brought ready with him. Macpherson said "If your Lordship had already come to a decision and written out your judgment, you could well have spared me the trouble of talking for over two days."

Parsons made one of the best Judges in his time. When Farren died suddenly, Parsons acted as Chief Justice. He was so much appreciated by the practitioners and the public that memorials were sent by some public bodies praying that Parsons should be made permanent Chief Justice although he was a Civilian.

JUSTICE NANABHAI HARIDAS

Nanabhai Haridas before he was appointed Judge had occupied the position of Government Pleader and had large practice. Some years before I joined the Appellate Side Bar, Nanabhai and William Wedderburn who was acting as a Judge perturbed the Anglo-Indian community by their action regarding certain criminal cases that arose out of the negligence of the drivers and guards of the Southern Maratha Railway who were mostly Anglo-Indians. Some serious accidents had occurred involving severe injuries to human beings and cattle. The trying Magistrate convicted the accused but imposed only sentences of small fines. Nanabhai Haridas and Wedderburn sent for the records and proceedings of these cases and after giving notice to the accused and hearing them, enhanced the sentences to various terms of imprisonments.

On another occasion, Nanabhai and Birdwood passed strong strictures on the conduct of an European Assistant

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Collector. An Indian Forest Officer happened to meet the Assistant Collector in the bazaar. The Assistant Collector finding that the Indian did not salaam him, stopped him and kicked him. The Forest Officer prosecuted the Assistant Collector and the Collector who tried him discharged him with a warning. Nanabhai on a review of the criminal returns from that District called for the records and proceedings and issued a notice to the accused to show cause why he should not be sentenced. I was present in Court when judgment was given. The Judges criticised severely the behaviour of the European Officer and said that such conduct was bringing disgrace on British administration and fined the accused Rs. 100.

JUSTICE JARDINE

Jardine was a deep student of English history, constitution and literature, both European and Orient. He had great concern for liberty of speech and of the press. Two cases in which these qualities were abundantly displayed may be referred to here.

On August 11, 1893, grave Hindu-Muslim riots broke out in Bombay, and for several days there was great bloodshed and destruction of property in the city. Communication between Bombay and Poona was dislocated for several days. The police and military were for a time unable to cope with the fury of the Muslim crowds. The Hindu population, and more especially the Gujaratis, were terrified and large numbers of people left the city. The Kamatis and Ghatris, more especially the mill-hands among them, came out and with great valour assisted the police and military in quelling the riots.

After the riots had subsided, one Kanji wrote and published a poem in Gujarati giving a narrative of the causes and progress of the riots. In the course of this narrative, the author incidentally extolled the Ghatris and Kamatis for their brave resistance and for the aid they

rendered to the authorities in putting down the disturbances. In one of the stanzas, after praising the Kamatis and Ghatīs, he said "Fight again for the country's good, Brave, Brave are the Kamati people." Kanji was prosecuted in the Court of the Chief Presidency Magistrate under Sections 153 and 117 of the Indian Penal Code on the ground that some portions of his production were direct instigation to the Kamatis and Ghatīs to riot. The Magistrate convicted the accused and sentenced him to three months' imprisonment and a fine of Rs. 201.

On appeal, the High Court set aside the conviction and sentence, holding that the poem when read as a whole was not an incitement to riot but was really in praise of all those who had exerted themselves in putting down the riots. In his judgment, Justice Jardine observed: "We have to consider the whole poem giving its weight to every part." He further said: "The Court cannot safely deal with a product like this without remembering the rhetorical forms used by the writer. Poetry often has more meaning than prose. Read how Addison's *Plato* was applauded by both Whig and Tory. The translations remind one of those of Dryden in *Alexander's Feast* and of Schiller in the *Song of the Bell*, of some of the psalms. The attempt is to move by pity and terror; and the prosecution urge that the line beginning 'Fight again' and what follows are calculated to move to rage and violence, to incite the Ghatīs and Kamatis to fire another Troy. Not every poet is as cautious as Addison, of whom Johnson says "When Pope brought in the Prologue (to the tragedy of *Cato*) which is properly accommodated to the play there were these words 'Britons, arise! By worth like this approve' meanig nothing more than Britons, exert and exalt yourself to 'the appreciation of public virtue. Addison was frightened lest he should be thought a promoter of insurrection and the line was altered to "Britons attend!" It may be conceded that the words 'fight again' are incautious. But then we find the poem from beginning to end consists of lamentations over the

riots. The actual words 'fight again' are qualified by the words 'for your country's good.' Judged by the context and the whole spirit of the poem as well as ordinary meaning, the qualifying words do not necessarily imply wanton outbreak and fighting. The latter song about contempt of death expresses sentiments adopted by many poets and religious moralisers in all ages and countries. They are found in the *Bhagvat Gita* and the Shakespearian remark that 'brave men die but once and cowards often'."

With regard to the evidence of some witnesses that some Mahomedans to whom the lines were read by the witnesses complained of them, Mr. Justice Jardine said:—

"But this fact is hardly relevant to the question whether the accused in publishing the poem did what was illegal. Many sermons and comments on the acts or opinions of others, eulogies or elegies to prominent leaders or the mighty dead may be delivered in a legal and peaceable way, and yet, especially in factious times raise much ill feeling in the ranks of the opposite party. Yet, this is not generally a reason for interference with the liberty of speech or of the press; such interference with legal rights would only cause oppression and give increased power to faction. People may be angry; but if they allow themselves by anger to commit assault, they expose themselves to criminal punishment. This is the answer of the law to people like the Mussalman witnesses who sat down to hear the poem read and then thought they did well to be angry. Milton shall not be silenced because Salmasius seeks to break his head. The peaceful lists of literature had long been opened to Whig and Tory, Catholic and Protestant, Platonist and Materialist, Round Head and Cavalier, Hindu and Mussalman." (*I.L.R.* (18), *Bombay*, Page 758).

To compare an ordinary versifier Kanji to Milton may betray lack of proportion but the whole judgment reveals

the high standard of justice that fired Mr. Justice Jardine and displays his great learning and industry.

CRAWFORD PROSECUTION

For a considerable time, there were reports current that Mr. A. T. Crawford, Revenue Commissioner of the Central Division, was taking illegal gratification for appointing persons as Mamlatdars and Deputy Collectors and it was said that one Hanmantrao Jagirdar was the intermediary in these doings. Sometime in the year 1888, the said Hanmantrao was prosecuted before Mr. Vidal, District Magistrate of Poona. During the course of that trial certain Mamlatdars and Deputy Collectors gave evidence in which they deposed that they had given moneys to Hanmantrao as gratification for procuring their advancement at the hands of Crawford. Hanmantrao was convicted and his appeal was dismissed by the then Sessions Judge Candy. In his judgment, Candy held that these officers had confessed to having given bribes and were guilty of abetment. Candy sent a copy of his judgment to the District Magistrate and it was on the latter's file. Soon after this, a commission was appointed by Government to inquire into the charges of bribery against Mr. Crawford.

Pending the enquiry before the Special Commission, one Ganesh Narayen Sathe lodged a complaint in the Court of the same District Magistrate of Poona charging Balakrishna Govind Shindekar and five other Mamlatdars, who had given evidence at the trial of Hanmantrao, for having given bribes and thereby abetted the offence committed by Hanmantrao. The District Magistrate dismissed the complaint on the grounds, firstly that the complaint was expected to be heard in the cases under enquiry by the Crawford Commission in which cases the persons complained against were presumably to be examined as witnesses; and secondly that it was presented by a person who had no ostensible motive for arrogating to himself the functions of a

public prosecutor beyond a declaration, contained in the complaint, that he was a "friend of equity and even-handed justice." The District Magistrate further stated that it was not a *bona fide* complaint and that the object of the complaint was to intimidate witnesses on whom the prosecution presumably relied in the proceedings before the Crawford Commission.

The complainant applied in revision to the High Court and, in October 1888, the Vacation Bench consisting of Mr. Justice Birdwood and Mr. Justice Jardine called for the record and proceedings. While doing so, the Judges brought to the notice of Government the statements made by the Mamlatdars during the trial of Hanmantrao and said that Government should inquire into the conduct of the Magistrates who had admitted that they had paid money for getting their offices. When the record and proceedings came, a full bench consisting of Chief Justice Sargent, Justices Bailey, Scott and Nanabhai heard the matter on January 18, 1889. They held that the Magistrate had wrongly dismissed the complaint on extra-judicial considerations and that he must proceed to deal with the complaint according to law.

When the case was taken up by Mr. East, who had succeeded Mr. Vidal as District Magistrate, the complainant asked leave to withdraw the complaint as he had no personal knowledge of the facts alleged in his complaint. The Magistrate examined him at great length as to the motives which had induced him to file the complaint and asked him to disclose the names of the persons at whose instigation he was acting. The complainant refused to answer these questions. The Magistrate ordered him to be imprisoned for seven days and dismissed the complaint.

A Division Bench of the High Court consisting of Justices Scott and Jardine sent for the record of the case and called for a report from the Magistrate. The Magistrate who had thus disregarded the previous orders of the High Court had the audacity to say in his report that the

complainant "had the impudence to trouble their Lordships." The Court passed severe strictures on the manner in which the Magistrate had dealt with the case and held that his action in dismissing the complaint and awarding imprisonment to the complainant for not having answered questions which the Magistrate had no right to put to him was not justified. The judgment delivered by Justice Jardine in this case is a standing monument to his industry, deep study of Constitutional law and English and Indian case law. He laid great stress on the purity of judicial administration and traced how that was secured and safeguarded from the date of the Magna Charta to the present time by various judicial pronouncements of the British Courts. He referred to the impeachment of the Earl of Macclesfield, Lord Chancellor in 1725, for the sale of Judicial offices for which he was convicted by the House of Lords. While granting that the complainant's motive might be very questionable and that he might be acting as a tool of other people, Justice Jardine held that where public policy was in question, the Courts had to hearken as stated by Lord Mansfield in one of his decisions, even to an accomplice in crime tainted with criminal contamination in order to ensure the proper investigation of crime alleged to have been committed as is often done in cases of false coinage, bribery and secret conspiracies.

In another passage Justice Jardine said:—

"If the persons complained of were not Magistrates and Civil Judges exercising enormous powers, I would have less difficulty in coming to a judgment. But, as the Lords of the Privy Council say, it is specially in India that purity in the administration of justice must be secured."

He further quoted the Privy Council who had said:—

"It is palpably prejudicial to the good of the public to have places of the highest concernment, on the due

execution whereof the happiness of both King and people depend, disposed of, not to those who are most able to execute them, but to those who are most able to pay for them; neither can there be any greater temptation to officers to abuse their power by bribery and extortion and other acts of injustice, than the consideration of having been at great expense in gaining their places, and the necessity of sometimes straining a point to make their bargain answer their expectations."

Justice Jardine had great hesitation in determining what orders the Court should pass in the matter. In a passage of his judgment he said:—

"Lastly, we have now to determine what order we should pass in the case before us. What Mr. East inquired into is not the nature of the complaint; what he has elicited by stress of imprisonment, is irrelevant information as to the advice on which the complainant acted, the names of his advisers and the motives for complaining. Thus the persons accused have, by the mistakes of two Magistrates, escaped the preliminary investigation which might or might not have led to their arraignment, and public justice has not been vindicated, the accused were not summoned and the complainant was sent to prison. Now as a matter of strict law, we ought perhaps to enforce obedience to the judgment of the Full Bench and after hearing the accused, determine whether we should order the Magistrate to enquire into the truth of the complaint and let the motives of the complainant and his advisers alone."

Having regard however to the fact that the conduct of these Magistrates and Mamlatdars was a subject of discussion in the House of Commons and that directions about them had been issued by His Majesty's Secretary of State

and enquiries were being held by the Government of Bombay, the Court ultimately came to the conclusion that no further action need be taken and the papers were returned to the Lower Court. Ultimately an Act of Indemnity was passed by the Central Legislature whereby these officers were saved from prosecution but, as insisted upon by the High Court, all these corrupt officers were removed from their offices. (*I.L.R.* 13 Bom. p. 590.)

This case affords an illustration of the evil of the combination of executive and judicial functions. If the two District Magistrates who dealt with the case had not been Collectors and Revenue Officers under the Executive Government but purely judicial officers under the High Court, they would not have ventured to adopt the highly unjudicial attitude they did.

Crawford in his *Reminiscences* which he published in 1908 said:

"Men in high position in the Civil Service, most of whom were my assistants, and owed their promotions directly to me, men who with their wives and daughters, almost daily partook of my lavish hospitality and were proud to be invited to Moola Lodge on Sunday evening parties, actually obtained access to my private apartments, read my letters, drew sketches of the interior of my bungalow and removed papers that would have been of enormous service to me in my defence. May God Almighty curse them one and all."

Government never forgave Jardine for what they conceived to be the obstruction that the High Court caused them in the matter. When Birdwood retired from the membership of the Executive Council in the year 1897 Government, departing from the usual practice of taking one member from the judicial branch and one from the executive branch of the service, did not appoint Jardine to succeed Birdwood but instead appointed Ollivant from the

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executive branch. The appointment of Ollivant appeared in the papers on a Wednesday and Jardine sent in his papers for retirement and sailed on Saturday. I well remember this because during those few days I was out of Bombay on professional work, and on my return I found a letter from Jardine awaiting me telling me what had happened and regretting that he was unable to meet me before he sailed as I was out of Bombay. After retirement Jardine entered Parliament.

We used to correspond with each other. When I was elected to the Imperial Legislative Council, I received the following letter from him.

London, 18th April 1915

Dear Chimanlal,

"I read in the papers that you have been elected to succeed Mr. Gokhale as member of the Governor-General's Council. This is significant, especially at such a time, of the respect in which both your character and abilities are held and I write to congratulate you and your family on this very honourable, important and useful position. May you enjoy it for many years."

* * * *

After referring to his sons who were fighting on the front, he proceeded to say.

"For us it is a time of anxiety. I keep before the public the splendid conduct of the Indian Princes, peoples and soldiers and I mean to solace my own anxiety with the *Bhagvat Gita*, especially the instructions to Arjuna."

Yours Sincerely,
John Jardine.

In the year 1917, he was created a Baronet. On my sending him congratulations on the event, he wrote to me as follows:

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London, 5th June 1917

Dear Chimanlal,

I am obliged by yours of April 25 and glad to receive your kind remarks on my being created a Baronet and on my career in India. It interests me much to learn that as soon as you relinquished the office of member of the Imperial Legislative Council, you were appointed Vice-Chancellor of the Bombay University, a high and important office. I was not long enough in it to do anything. I would have liked to have mooted the question whether we would get endowments to establish two Chairs—First, one of comparative languages—seeing that almost all Europe and Asia meet in Bombay—Sanskrit and all its descendants—strange dialects like Waders, Waghrees, and the queer people of the Konkan hills—Konkani also where Latin words mix with Marathi, Arabic also. Second, one of comparative Religions. They have one at Leyden in Holland. In Bombay, there are all religions and most divisions of each to be studied as well as all the records of the past, Brahman, Buddhist, Muslim, Christian—all the changes they undergo among particular castes and conditions and centuries. Take such horrible facts as the burning of 18 widows at Edar in 1836 and the burning of heretics by the Christian Government in Goa not so long ago. What additions to folk-lore and history would come from such 2 Chairs for research? The one set would also help the other. I hope you will have a highly successful tenure.

What you say about military matters and Indian policy I will think over and mean to discuss your letter with Mr. Chamberlain.

Yours Sincerely,
John Jardine.

JUSTICE TELANG

Nanabhai Haridas died in the year 1889. Vishvanath Narayan Mandlik had died a few months before. It was generally expected at the time that Shantaram Narayan, who had succeeded Mandalik as Government Pleader, would be appointed to succeed Nanabhai. Telang was also a hot favourite but the difficulty in the way of his appointment was that he was neither a Barrister nor a pleader but an Advocate, and under the Act, the qualification for a person to be appointed as High Court Judge was that he must be either a Barrister of five years' standing or a pleader of 10 years' standing. Ultimately the difficulty was got over by holding that Telang could be considered a pleader of 10 years' standing because the definition of a pleader in the Civil Procedure Code included an Advocate.

Telang was only 39 at the time and was the youngest Judge ever appointed to the High Court Bench. His appointment met with general approval and he fulfilled all expectations. Telang had a big reputation as a scholar and had great mastery of the English and Sanskrit languages. He was an eloquent public speaker and was taking an active part in politics. He was one of the Secretaries of the Bombay Presidency Association and at the time of his appointment as Judge was Chairman of the Reception Committee for the Congress Session which was to be held in December of the same year.

Strangely enough on an important question of Hindu Law that came before a Full Bench consisting of Sargent, Bailey, Telang and Candy and which turned on the correct reading and interpretation of the texts of Yagnavalkya and Mitakshar in Sanskrit, the three European Judges who could not read or understand the original texts but had to depend on translations overruled the view of Telang who had studied the texts in the original Sanskrit and was in a better position to understand the whole scheme of the texts. The question was whether a son who acquired by birth

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interest in the property belonging to a joint family consisting of himself, his father and uncles could enforce partition and get his share if the father did not agree to a partition. It was common ground that if the family consisted only of the father and the son, the son could enforce partition of the family property against the will of the father, but it was held by the Judges other than Telang that if the family consisted of the son, his father and uncles, the son could not enforce partition unless the father consented. Telang's judgment goes into the original texts and it held that the son could enforce partition. In one place in his masterful survey of the Hindu Law on the point, he emphasised that the method indicated by him was the only correct method of interpretation of the texts "unless indeed we are prepared to hold that the Hindu Law is a mere farrago of arbitrary rules and not a coherent system based on logical grounds." The other High Courts have not recognised any such limitation on the right of a coparcener to ask for partition as the full bench held. Telang's health broke down in 1892 and he died in July 1893. A public meeting of the citizens of Bombay convened by the Sheriff was held in the Town Hall under the presidentship of Lord Harris, the Governor of Bombay, to mourn his loss.

JUSTICE CANDY

Candy made a good and industrious judge. But he was easily irritable and sometimes shouted at practitioners appearing before him. He knew the Indian languages of this Presidency, particularly Gujarati and Marathi, fairly well but not to the degree he imagined he did. When he was District Judge in Thana, a pleader was arguing before him on the construction of certain Marathi words in a document. The pleader maintained a particular construction, while Candy was of opinion that it meant something else. There was a heated discussion between the two and the Court adjourned for lunch. Candy's father, Major Candy, was reputed to be a Marathi scholar and had published a

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Marathi-English dictionary. The pleader during the recess hour went to the Library and consulted Major Candy's Dictionary and found that his own interpretation was correct. When the Court re-assembled after recess, the pleader said something like this: "Your Honour, during the recess hour, I have consulted Major Candy's Dictionary and he supports my interpretation. However, it is possible that your father may be wrong and you are right."

Another similar incident occurred when Candy was sitting on the Original Side of the High Court. A witness was under examination and he deposed: "वादीचे मने कलुं के कावे मारा घर आगल आवले" The interpreter translated it as follows: "The Plaintiff told me to come to his house next day." Candy shouted at the interpreter and said he was interpreting wrongly. He said, "the witness says that the plaintiff asked him to come near his house". The interpreter had the courage to tell His Lordship "I have interpreted the witness' answer quite correctly but if Your Lordship thinks it means something else, you may take down what you like." At this stage, Counsel intervened and explained to His Lordship that what the interpreter had said was correct and he then accepted the interpretation.

On another occasion, Candy was sitting on the Appellate Side with another Judge, and Narayen Chandavarkar was arguing before him and the question was about the interpretation of a Marathi expression in a document. Chandavarkar was submitting a particular construction and Candy violently asserted that it meant something else. Chandavarkar made a very fine retort. He said: "I do not presume to speak about the meaning of a phrase in a language which is not my mother tongue as confidently as Your Lordship appears to do." Chandavarkar's mother tongue was Konkani and not Marathi.

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I myself had an unpleasant incident with Candy. What occurred at the time was recorded by me immediately afterwards as follows:

At 2-30 p.m. to-day, I went to the Chamber of the Hon'ble Mr. Justice Candy to take a rule in an application for the removal of a guardian of one of the parties to a Review Application pending before His Lordship. I was accompanied by Messrs. Shah and Jhaveri, the pleaders who were instructing me, and the Sheristedar and Mr. Gokuldas Parekh who represented another party to the Review Application came in shortly after. While I was beginning to explain the nature of my application, Mr. Justice Candy asked me to sit down. I sat down and began arguing in support of my application. Mr. Justice Candy however remained standing but I expected he would sit down in a little while. After a minute or two Mr. Justice Candy asked me to stand up and the following conversation ensued.

Mr. Justice Candy: You must stand up and address while I am standing.

Mr. Setalvad: I thought Your Lordship was about to sit down.

Mr. Justice Candy: You must stand up and address even if the Court is sitting. You must show proper respect to the Court.

Mr. Setalvad: Your Lordship forgets that in Chamber, Counsel at any rate on the Original Side address the Court sitting. Moreover, in this instance, Your Lordship asked me to sit down. I have every desire to show proper respect to the Court but I submit the Court ought also to treat Counsel with due consideration.

(By this time Mr. Justice Candy had sat down).

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Mr. Justice Candy: I do not think Counsel address sitting in Chamber. That was not so in my Court. I asked you to sit because I thought you had come to see me on some University matter.

Mr. Setalvad: I am afraid Your Lordship's impression of the practice on the Original Side is not correct. Your Lordship must have known when I came in my gown and accompanied by pleaders that I had come for Court business and I said as much when you asked me to sit down.

Mr. Justice Candy: Go on. I do not care to fight about this matter.

8-8-1899.

Chimanlal Setalvad.

Messrs. Shah, Gokuldas and Jhaveri recorded their corroboration of this statement.

I then saw Mr. Macpherson and showed him the statement and told him what had occurred. I further told him that I was going to Sir Lawrence Jenkins, the Chief Justice, to complain about the rude behaviour of the Judge. Macpherson said, "Don't take Candy seriously. Nobody has ever accused him of good manners." I told Macpherson I was not going to let the matter stand there. He then told me not to do anything for a day or two. Evidently Macpherson must have spoken to Candy because the next day, Candy's *chopdar* came to me in the Library and said that the *Saheb* wanted to see me in his Chamber. I told the *chopdar* to inform the *Saheb* to write to me and tell me what he wanted to see me about. After a short while, the *chopdar* returned with a note from Candy to me saying "Please come. I want to talk to you about what happened yesterday." I then went and Candy apologised for what had happened. The incident thus closed. It must be said about Candy that though he was short-tempered and excitable he never bore malice. In this particular instance, although we had this row at the beginning, he heard my application quietly and made the order I wanted.

JUSTICE RANADE

Speculation was rife as to who would succeed Telang as Judge. The names of Badruddin Tyabji, Pherozechah Mehta and Wasudev Kirtikar were mentioned. Ultimately the choice fell on Mahadev Govind Ranade. Ranade as expected made a good Judge but he will always be better remembered for the indelible impress he left on his countrymen as a political, social and religious reformer and as one of the outstanding makers of modern India.

Having passed the Advocate's examination in the year 1871, he was appointed First Class Sub-Judge at Poona. There he found a great opportunity to awaken political consciousness in Maharashtra, and his was the master-mind behind the activities of the Poona Sarvajanic Sabha. His connection with political movements was not liked by the authorities. Chief Justice Westropp once wrote to him: "Your writings come in the way of your promotion. If you want promotion, spare these great efforts." Ranade's reply was very characteristic. "I am thankful to you, sir. So far as my wants are concerned, they are few and I can live on very little. Concerning my country's welfare what seems to me true, I must speak out."

In 1879 what was called "Phadke's Rebellion" took place and the Budhwar Palace and the Vishrambag Palace at Poona were set on fire. Ranade very unjustly came under a cloud of suspicion in the minds of the authorities and his letters and correspondence were censored. This showed the utter ineptitude of the bureaucratic mind in judging Indians correctly. In later days too, when Ranade was a Judge of the High Court, during the Tilak trial in 1897, detectives were hovering round Ranade's residence. I know of similar treatment in the case of Pherozechah Mehta and Gokhale. Ranade was one of the founders of the Indian National Congress. He was, in the words of Sir Homi Mody, one of the "seventy-two good men and true, the foremost among the India's intellectuals who on the fateful

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morning of December 27, 1885 sat together to carve out the future of their country." After he came to Bombay, Ranade, took an active part in the working of the University and was mainly responsible for the introduction of vernaculars in the University curricula. As a public speaker he had not the forcefulness of Pherozeshah or Surendranath Banerji but he had a deep clear voice and could always hold an audience. Sir Stanley Reed once said about him: "Without a note, without a pause, he poured forth his stream of learning and sound sense, holding his audience enthralled though he had none of the art of the orator. He made it easy to understand the unseen influence he exercised on the best minds with which he was brought into contact." Principal Selby of the Deccan College used to call him "Our Socrates."

JUSTICE TYABJI

After the retirement of Sargent, Farren who was then a Puisne Judge was appointed Chief Justice superseding Bailey who was the most senior Puisne Judge. Bailey retired and two vacancies occurred.

A. Strachy of the Allahabad Bar and Badruddin Tyabji were appointed. This was the first time that a second Indian Judge was appointed. The two appointments were simultaneously gazetted but it was understood that in the Letters Patent that were issued Strachy was designated as the senior among the two. It fell to Strachy's lot to try Tilak in the year 1897 to which reference will be made hereafter.

Badruddin Tyabji had taken an active part in Indian politics and was the President of the 3rd Session of the Indian National Congress held in Madras in 1887. He was a successful practitioner at the bar and his appointment was received with general satisfaction. He was appointed a judge on his own recognised merits as a lawyer and not because he was a Mohamedan. The pernicious theory of

having communal representation in the judiciary which in recent years has been adopted was never thought of in those days.

Tyabji had a clear grasp of principles and was able to appraise evidence at its true value. He was very independent and fearless. I well remember the judgment which he delivered in the suit for defamation that was filed against Kabraji, Editor of *Rast Goftar*, by Chambers who was the Editor of the weekly *Champion*. Chambers was a well known architect in those days. He was a radical in English politics and took an active part in the Indian National Congress movement. In Kabraji's paper an attack was made incidentally on the Indian National Congress which Tyabji held to be unfounded. In his judgment he said that he considered it a high honour that he had been once chosen as President of the Congress.

It was Badruddin Tyabji who made the order for giving bail to Tilak when he was prosecuted in the year 1897. On one occasion, some question of practice arose in a case before him and Raikes who was arguing said that Chief Justice Jenkins had in another case said that the practice was as he was submitting. Tyabji playing with his beard as he often used to do said: "Mr. Raikes, you can tell the Chief Justice with my compliments that I have been longer in this court than he has been and that the Chief Justice's view on the particular question of practice was quite wrong."

On another occasion when an European Barrister conducting a case before him was mispronouncing an Indian name, he said "If you want to practice in the courts in India you must learn to pronounce Indian names properly." This reminds me of what occurred between Justice Candy and Inverarity. Inverarity during the course of his arguments was continuously mispronouncing a particular Indian name. Candy corrected him and told him how to pronounce it correctly. Inverarity who was always tena-

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cious began to address the Court like this "Gordandos" as I pronounce it and Gordhandas as Your Lordship pronounces it" and went on like this whenever he had to refer to that person. Candy soon got tired and told Inverarity in sheer despair: "Pronounce the name as you like, but don't have the double version of the name repeated every time."

CHIEF JUSTICE JENKINS

Farran died in the year 1898 and Sir Louis Kershaw K.C. who had come out as Chief Justice of the Allahabad High Court a short while before was appointed to succeed him. He had a bad heart and he died about three months after his assumption of office.

On the death of Kershaw, Lawrence Jenkins who was Puisne Judge at Calcutta was appointed Chief Justice of Bombay at the age of 41. Lord Curzon in one of his despatches spoke of him as follows:

"We have here in Calcutta a Judge of the High Court named Jenkins who in less than three years has made a considerable reputation both for capacity on the Bench and for general energy and popularity."

With the appointment of Jenkins, a new era commenced in the history of the Bombay High Court. He proved himself a very capable and efficient Judge. While he gave a full and satisfactory hearing to Counsel, he always effectively controlled the proceedings in his Court so that no time was lost on irrelevant matters. Counsel appearing before him had always to be thoroughly prepared on both law and facts. It can truly be said that Jenkins made the Indian Bar on the Original Side. He took every opportunity to encourage Indian juniors by complimenting them whenever they had acquitted themselves well in the conduct of cases.

While I was arguing an appeal before Jenkins, in discussing a particular point, I said "I think My Lord etc., etc."

Jenkins turned to me and said "Counsel don't think, they submit." I rejoined by saying "Surely before Counsel submits he has to think!" He smiled and took it good humouredly.

This reminds me of an earlier similar incident but in which the positions were reversed. Telang was arguing before Sir Charles Sargent and another Judge an important Hindu Law case involving the interpretation of Sanskrit texts. Telang was a recognised Sankrit scholar and well-versed in Hindu Law. The point was a difficult one and Sargent turned to Telang and said "Mr. Telang, what do you think yourself is the right interpretation?" Telang answered: "Counsel submits to the Court what his client's contention is and is not expected to give his own opinion. It is your high duty to form and express your opinion."

In 1907 Jenkins retired from the Chief Justiceship of Bombay and became a member of the Council of the Secretary of State for India. Later Lord Minto wanted Lord Morley to send Jenkins back to Calcutta as Chief Justice. Lord Morley wrote to Minto as follows:

"I really don't think I can spare Jenkins. He is one of the two or three most valuable men on my Council. He has been of immense value to me about reforms and a more willing, ready and resourceful man in the legal and legislative line it has never been my fortune to meet. Besides that, he has made a grand sacrifice of personal ease and domestic comfort in consenting to exchange the snug life here for a return to Calcutta and only because he was told that you desired it and that I thought it would be for the public good."

Jenkins when he was in Bombay on more than one occasion advised me to qualify as a Barrister with a view to enlarge my qualifications for being appointed as a Judge of the High Court. In those days there were only seven

Judges in the High Court and owing to the statutory restriction that one-third of them must be civilians and another one-third must be Barristers, there was only one appointment left for which Advocates and pleaders could be chosen. From Whitehall, he again reminded me of this in a letter dated May 1, 1908, as follows:

"I hope before long to see you here; I feel sure you would be wise to get called to the Bar not because it would enhance your professional position or value but as extending your qualifications. If there is anything I can do towards assisting you to get called I will gladly do it."

SIR BASIL SCOTT

Basil Scott, who was Advocate-General succeeded Jenkins. Scott cannot be deemed very successful as Chief Justice if he is to be judged by the large percentage of reversals of his judgments by the Privy Council.

Scott was a person of strong likes and dislikes. Occasionally he was unnecessarily offensive. Once in the course of my argument before him he made an observation. I said "I quite agree." He said "I don't care whether you agree or not" I promptly replied "Your Lordship need not care but all the same I do agree." A little later he made some other observation and I purposely repeated "I agree." He kept entirely quiet.

JUSTICE RUSSELL

Russell was appointed a Judge of the High Court in the year 1900. The appointment was a surprise because he was not regarded as one likely to be considered for the post. It was that the appointment came about at the instance of the then Attorney-General in England in whose chambers in early days, Russell had been reading. Russell was a nice gentleman but did not prove a satisfactory Judge. Apparently he laboured from such

want of confidence in himself that he easily allowed himself to be led by senior Counsel. Mr. Inverarity and next to him Lowndes carried the greatest weight in his court. I once suffered heavily when I was opposed by Lowndes. In an Air and Light Case, parties had taken a consent decree by which the defendant had undertaken to make various changes in certain of his windows and apertures. The real position with regard to a particular window had been misconceived by the parties while taking the consent decree, and it was physically impossible to carry out the direction in the decree about that particular window. The plaintiff took out a notice for contempt of Court against the defendant for not having carried out that part of the decree.

Dinsha Davar and myself were briefed for the defendant to show cause. As Davar was otherwise engaged I had to go in. I put before the Court plans showing the actual position and pleaded that the particular direction in the decree had gone in by a common mistake and that it was impossible to carry it out. Mr. Lowndes who appeared against me insisted that my client had committed contempt in not carrying out the directions of the decree and Russell accepted that and ordered a warrant of commitment to be issued against my client but it was to lie in the Prothonotary's Office for a fortnight and if my client did not fulfil that particular part of the decree within that time, the warrant was to be executed. This happened during the morning sitting. In the recess hours we hurriedly drew up a Memo of Appeal and at three O'clock, I appeared before Sir Lawrence Jenkins and another Judge in the Appeal Court and presented the appeal and asked that it be heard very early.

Sir Lawrence Jenkins accepted the appeal and fixed the hearing of the appeal after two days dispensing with the printing of the Appeal paper-book and allowing typed copies of the proceedings to be made available to the Court

and the respondent. When the appeal was called on, on the appointed day, I stated the facts and put before the Court the plan showing the physical impossibility of carrying out the directions of the decree in that particular. Jenkins asked me whether I had made this clear to the learned Judge. I said that I had told the learned Judge exactly what I had stated to the Appeal Court but Mr. Lowndes argued that what I had said was no excuse for disobeying the decree and the learned Judge accepted Mr. Lowndes' contention. Jenkins immediately turned to Lowndes and asked him how the order of the learned Judge could be supported. Lowndes tried to support it but the Court was against him. The Court set aside the order of Justice Russell and said that on the facts, it was a clear case for rectification of the decree, and turning to Lowndes suggested to him that he should advise his client to agree to rectification of the decree.

The talk at the Bar that Russell was allowing himself unconsciously to be led by Inverarity had possibly reached his ears and he had evidently come determined one morning not to be so led. Curiously enough I or rather my client was a victim of this determination. Russell was taking chamber work that day and I was appearing in support of a summons and Inverarity was against me. On the previous day the client and the attorney instructing me held a conference with me. I told them that we had no case and were bound to lose. I advised the client to come to a compromise with the other side. He was, however, obstinate and wished me to fight it out. The next morning we appeared before Russell. I submitted my case and Inverarity opposed me. Russell decided in my favour. My client who was sitting behind me turned to me and said "You were advising us that we had no case but see the judge has decided in our favour." I told the solicitor that the client was getting elated for nothing for when the matter got to the Appeal Court, he was bound to lose and

would have to pay the costs in both courts. The other side appealed. A couple of days before the appeal was to be heard, the solicitor and the client came and offered me the brief to appear in the appeal. I repeated to them my view of the matter and said that it would be better for them if they instructed some other Counsel. The client however insisted that I should appear for him. When the appeal was called on, Sir Lawrence Jenkins, who had evidently read the paper-book, instead of calling upon the Appellant to address the Court, turned to me and asked me how I supported the judgment. I said all that could be said but the Appeal Court reversed Russell's order and made my client pay the costs in both courts.

Some years after his appointment Russell developed some ailment by which it was difficult for him to keep awake while sitting in Court. At intervals, he used to go to sleep. In order to awaken him the interpreter sometimes lifted a chair and put it back on the floor making sufficient noise. On one occasion, a case was going on before him in the Central Court. A witness was in the box and while the Counsel was examining him, Russell went to sleep. The Counsel had a brain wave and he shouted at the witness "Why don't you answer my question?" This woke up the judge and believing that the witness was recalcitrant and not answering Counsel's question, he turned to the witness and said angrily "Why don't you answer the question? If you behave like this, you will be sent to jail." The poor witness was much confused and said "How can I answer a question when no question has been put to me?" This caused considerable merriment among those present in court at the time. In order to shake off this tendency to sleep in spite of himself, the judge got a high table put in front of him and instead of sitting on a chair, he kept standing while hearing cases. Even so, there were moments in which he went to sleep standing.

Once Robertson and I were conducting a case before Justice Russell, I appearing for the plaintiff and Robertson for the defendant. During the cross-examination of my client, when some important questions were put and answers given, Russell had gone to sleep and that part of the evidence which was really important for the defence had not fully gone on his Notes. While this was happening I warned Robertson but somehow, Robertson did not take my warning. When we came to argue the case Robertson strongly relied upon particular answers that the plaintiff had given in cross-examination. Russell promptly contradicted Robertson and said that the witness had never said anything of the sort. He turned the pages of his Notes and said that he did not find there any such answers. I found myself in an embarrassing position. If Robertson had appealed to me or had asked the learned Judge to enquire of me whether those answers were given, I would have felt myself bound to tell what exactly happened. But neither Robertson nor the Judge said anything. In the result Robertson lost the case, I believe largely due to those answers not having gone down on the Judge's Notes.

One of his brother Judges sitting with him on the Appellate Side once treated him unkindly. Russell went to sleep just a little while before 2 p.m. when the Court rises for lunch. Aston, who was sitting with him, without disturbing Russell quietly rose at 2 p.m. and walked out, and the pleaders who were arguing then left the Court. Russell woke up after a little while, and finding the Court empty and his brother Judge gone, himself left the room.

Russell, when he was sitting in the Second Court on the Appellate Side taking criminal work, approached criminal cases in the right way by starting with the presumption that the accused was innocent unless the prosecution proved that he was guilty. I appeared for the accused in a criminal appeal before Russell and Aston and while I was arguing, the two learned judges began talking and Russell

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talked sufficiently loudly for us at the bar to hear. He said to Aston "You as a Civilian Judge often start with a presumption in favour of the prosecution while I as a Barrister Judge start with the presumption that the accused is innocent and the prosecution must prove that he is guilty." The reflection by Russell on Civilian Judges as a class was certainly not justified. In the result, they disagreed, Russell holding that my client should be acquitted and Aston holding that he was guilty. The matter was referred to a third Judge Mr. Justice Batty, a Civilian Judge, who after hearing us, agreed with Russell.

Russell's observation about Aston's mentality was justified. When he was Sessions Judge at Poona, Mr. Chaubal appeared before him to defend an accused. When he was cross-examining one of the prosecution witnesses, the witness denied what Chaubal put to him. On that, Chaubal proceeded to further cross-examine him in order to show that the witness' denial was untrue. Ashton intervened saying: "I can't allow cross-examination upon cross-examination. The witness has denied what you put to him and you can't further cross-examine him on that statement." It was after considerable heated argument that he allowed the cross-examination to proceed. Once in the High Court when Branson was arguing a criminal appeal, he said that the only evidence against his client was accomplice evidence. Aston immediately said: "If you say that the evidence is of accomplices, you admit your clients' guilt." It took considerable argument for Branson to dislodge Aston from that position.

JUSTICE CHANDAVARKAR

About the end of 1901 Ranade fell ill and went on leave. Narayen Ganesh Chandavarkar was appointed to act for him. He had been selected to preside over the annual session of the Indian National Congress to be held at Lahore during Christmas week. After presiding at the Congress Session he assumed office as Judge in January

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1902. He had been in active public life for many years and was a member of the Bombay Presidency Association and its Secretary. He had gone to England as one of the delegates of the Congress in the year 1885. He was a good platform speaker and often addressed public meetings. He was very studious as a lawyer and had compiled his own digest of law cases which he always kept up-to-date. That digest which had black covers and which came to be known at the Bar as Chandavarkar's Black Book was always his companion on the Bench. His constant study of case law and his keenness to consult authorities sometimes proved a hindrance to a correct appreciation of the merits of cases. If one properly appreciates facts then in a large majority of cases there is little difficulty in applying the law to the facts found.

I vividly remember what happened in a case of caste dispute in which Basil Scott and I appeared for the plaintiff and Inverarity appeared for the defendant. During the hearing of the case, Chandavarkar was looking into his Black Book and sending for authorities from the Library. The case lasted for several days. While Scott was replying Chandavarkar was still sending for some authorities. Scott said "If your Lordship will only put aside the authorities for the moment and follow my argument, you will know more about the case." There was another occasion on which the Black Book became the subject of comment. On the Appellate Side an appeal was being argued in which some question of law arose. Chandavarkar remarked that of late pleaders were not sufficiently assisting the Court by drawing attention to authorities bearing on the points arising. Mr. Kelkar, a pleader who had a great sense of humour was sitting in Court though not engaged in this particular case. He got up and said "The pleaders do not take much trouble to find out authorities because they know that Your Lordship has got them all in that Black Book."

In 1912 Chandavarkar retired on his acceptance of the post of Dewan of Indore State.

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Many friends expected that I would be invited to succeed Chandavarkar as a Judge. I was, however, sure myself that with Scott as Chief Justice and Sydenham Clarke as Governor, any person taking an active part in politics would be avoided. I would record here an incident that occurred in this connection. One day as I was returning to my Chamber for the recess hour, Lallubhai Shah who was then Government Pleader accompanied me saying that he wanted to speak to me about an important matter. When we reached my Chamber, Lallubhai told me that as Chandavarkar was going to Indore it was eminently likely that I would be asked to succeed him as a Judge and he said that in that event, I should not refuse the offer. I assured Lallubhai that in my view, no such offer would be made as the authorities would not consider a person in active politics. I reminded Lallubhai how in 1909 contrary to all expectations Chandavarkar was ignored for the membership of Council and Chaubal was selected as he was free of any taint of politics. After a few days, it was announced that Lallubhai Shah himself was appointed to the vacancy. When Lallubhai had that conversation with me, he had no idea that the Judgeship would be offered to him. Lallubhai was a hard-working and conscientious Judge. He was not brilliant but he set a great example of a Judge aloof and detached and devoted to his work.

After relinquishing the post of Diwan at Indore Chandavarkar came back to Bombay and took part in politics. He later became President of the Bombay Legislative Council under the Montagu-Chelmsford reforms.

JUSTICE BATCHELOR

Batchelor was appointed a Judge of the High Court in the year 1904 superseding several I.C.S. men senior to him. It was said that Jenkins was much impressed by his judgments that came before him in appeal. Batchelor was for many years District Judge at Ahmedabad and he knew the Gujarati language very well. He was a student of

Gujerati literature, both prose and poetry. Soon after he came to the High Court, I was arguing an appeal before a Bench consisting of Jenkins and Batchelor. In the midst of my argument, Batchelor intervened and said something which showed that he had entirely missed the point of my argument. I turned to Mr. Dinshaw of Ardeshir, Hormusji and Dinshaw, Solicitors, who was instructing me and spoke to him in Gujarati: “આ પોરીઓ સમન્યા વગર મુરખ જેવું બોલે છે” (“This boy does not understand and is saying something very foolish”). I did not realise then that I had said this sufficiently loudly for Batchelor to hear. About a month afterwards I was at a dinner at Mr. Justice Batty's house and Batchelor was next to me at the table. After some conversation he spoke to me with a smile in Gujarati:

તમે તે દીવસે મારી સખત ઝાટકણી કહાડી.

હું ખરેખર મુરખ જેવું જ બોલતો હતો.

(“You came down upon me heavily the other day when you were arguing an appeal. I was truly foolish”).

On another occasion, on the Original Side, Batchelor was trying a case in which the question was about the construction of a Will in the Gujarati language. The whole thing turned on the sense in which the word તે was used by the testator in a particular sentence. When I submitted my interpretation Batchelor agreed with that and said તે here is used in the same sense in which તે had been used by the Gujarati poet Dayaram in a particular couplet and he repeated the couplet in Gujarati.

JUSTICE BEAMAN

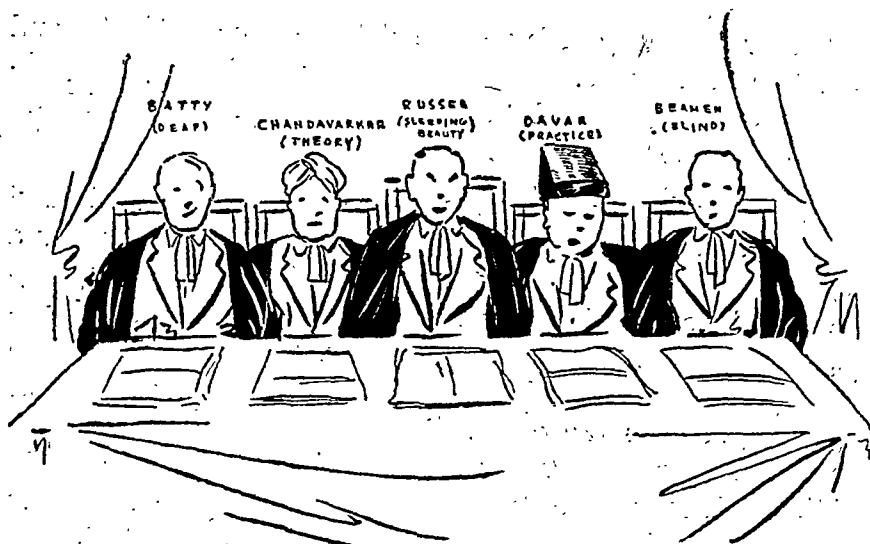
Beaman was appointed a Judge in 1907. Beaman was a highly intellectual person; well-read and had great command over the English language. He was, however, handicapped by defective eye-sight. He was able to see only from a particular angle and reading and writing were very difficult for him. He had, however, wonderful memory and at the end of the hearing of a case, he would deliver judg-

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ment straightaway referring in detail to the evidence and exhibits in the case. He used to record evidence by typewriter and he touched the right keys and typed without looking at the typewriter.

Beaman had abundant self-confidence and considered himself a superior person. Even when he had to follow a decision of the Privy Council, he would criticise the judgment and would point out what he thought was bad reasoning. Once he was sitting with Lawrence Jenkins on the Appellate Side and I appeared on one side and Ganpat Sadashiv Rao on the other. The question at issue turned on the interpretation and effect of the arbitration schedule of the Civil Procedure Code. The view that I was submitting was supported by the decisions of three High Courts. When I argued relying on these authorities, Jenkins appeared to be in my favour while Beaman was evidently taking the opposite view. During my argument, Beaman tried to point out how in his view the Judges of the other High Courts on which I was relying were mistaken. I tried my best to answer him and ultimately in despair said "I have nothing more to say. I have on my side the view of 10 Judges of three High Courts. It is possible, however, that they are all wrong and Mr. Justice Beaman is right." Judgment was reserved.

After some time Beaman went on leave and the judgment of the court remained undelivered. We all expected that judgment would be delivered on his return from leave. Some days afterwards the appeal was put down for fresh hearing before Jenkins and Chandavarkar. Rao and I both thought that instead of being put to the trouble of arguing the appeal over again, judgment could be delivered after the return of Beaman. We therefore, mentioned this to Jenkins but he said that it was no use waiting for Beaman's return. The appeal was heard and Chandavarkar agreed with Jenkins and judgment was delivered in my favour.



Beaman had a great sense of humour. Once he was sitting in a full bench consisting of Russell, Chandavarkar, Batty, Davar and himself and he described to a friend the bench in the following couplet :

The Blind to the left and the Deaf to the right
Theory and Practice on either Side
And the Sleeping Beauty in between.

JUSTICE KHAREGHAT

Mr. M. P. Khareghat came to the High Court as an acting Judge in the year 1907. This was the first time that an Indian I.C.S., was brought to the High Court. Till then senior Indian Civilians in the Judicial branch had been ignored for vacancies in the High Court. Mr. Khareghat would have been confirmed as a Judge but for his conscientious objection to sentence any person to death. As a Sessions Judge, he had always refrained from imposing capital sentence. When the time came for his confirmation he made it clear to the Chief Justice and Government that he would never impose capital punishment. Under the circumstances, Government found themselves unable to make him permanent.

In this connection, I am reminded of what happened in a murder case many years ago. Three persons were convicted of murder by a Sessions Judge in Gujerat and were sentenced to be hanged. The capital punishment was confirmed by the High Court. On the petition of the accused, however, Government commuted the sentences to transportation for life and the convicts were sent to the Andamans. Three years afterwards, another murder took place in the same locality and some other persons were tried for the offence and were convicted. In the course of the trial, it was conclusively established that the first murder had also been committed by the accused in the second murder case and not by the accused who had been convicted for it and sent to the Andamans.

When the matter came up before the High Court, this conclusion was accepted by the High Court who thereupon communicated to Government their view that the accused who had been transported to the Andamans were really not guilty. On this, Government took action and those men were pardoned and released. If unfortunately the original death sentences passed upon them had not been commuted, those three innocent people would have been hanged. It is on considerations based on such possibilities that capital sentences have been abolished in some countries. One cannot, therefore, blame Mr. Khareghat for having conscientious objection to capital punishment.

CHIEF JUSTICE MACLEOD

N. C. Macleod who was Official Assignee was temporarily appointed as Judge to hear Land Acquisition cases and was later confirmed. On the retirement of Scott in 1919 he became Chief Justice. He had a very quick grasp and insatiable greed for work which at times made it difficult for counsel as well as the Judge sitting with him to keep pace with him. He knew human nature very well and had an uncanny faculty for spotting

the truth. But parties as well as counsel often felt that they did not get a full and patient hearing. When once he formed a view, he often rendered himself unreceptive to arguments favouring a contrary view. It is not enough in the administration of justice that justice is done but it is also essential that litigants and counsel must feel that justice is being done to them. When the Bar welcomed me on my assumption of office as Judge in June 1920, I emphasised this in my reply. Macleod worked hard and expected his brother judges to do the same. During the last war the filing on the Original Side in one year rose to 9,000 and still the work was speedily cleared though there were only seven judges in those days. Macleod was very human and was always ready to assist any one in difficulty. Lady Macleod did very creditable humanitarian work among the poor in Bombay.

CHIEF JUSTICE MARTEN

In 1916, Amberson Marten was appointed a puisne judge. Marten was very good in law and was hard working and his judgments were sound. He was sometimes meticulously particular about small matters. If the same name was differently spelt, at different places in pleadings or affidavits, he would get annoyed and ask the necessary corrections to be made before proceeding further. When Macleod retired in 1926 Marten was appointed Chief Justice. As Chief Justice, he began to attach rather an exaggerated importance to what was called "administrative work." Almost every week, the courts rose early in the evening on some days for administrative work. Once one of the Judges was occupied entirely in administrative work for nearly a month. It was said that one of the items at a Judges' meeting was approval of the cloth to be used for the Court's *Chopdars* and peons! During the regime of the previous Chief Justices, one never heard of administrative work and such work never curtailed the hours of court work. Similarly after the retirement of Marten, during the

13 years' tenure of Sir John Beaumont, there was no mention of administrative work.

CHIEF JUSTICE BEAUMONT

On Marten's retirement, Sir John Beaumont became Chief Justice. He had abundant common sense and was clear-headed. Evidently, he had no ambition to write elaborate judgments for the benefit of posterity; almost always he used to deliver oral judgments on the spot. On the retirement of Sir John Beaumont, there was naturally great expectation that an Indian would be appointed to succeed him but that expectation was not fulfilled. The Original Side Bar at a special meeting held for the purpose on April 12, 1943 passed the following resolution which was moved by me.

"The Bombay Bar Association records its emphatic protest against the appointment of an English Barrister as Chief Justice of Bombay in succession to Sir John Beaumont, passing over the most senior Puisne Judge who is a member of the Bombay Bar and happens to be an Indian. It is highly regrettable that when an opportunity presented itself of appointing an Indian Chief Justice it was not availed of. This Association views with grave dissatisfaction this action on the part of the British Government, which, in the opinion of this Association, is an unmerited reflection both on the Indian members of the Judiciary and the Bar."

It must here be stated that both the Governor and Chief Justice had sounded my son Motilal sometime in 1941 whether he would accept the Chief Justiceship if it was offered to him. He, however, expressed his unwillingness to accept the post. No attempt was thereafter made to find a suitable Indian to fill the post.

SOME PRACTITIONERS

THE leading practitioners on the Appellate Side at the time when I joined the Appellate Side Bar were Vishvanath Narayen Mandlik, Government Pleader, Vasudev Kirtikar, Ghanshyam Nilkanth, Maneksha Talyarkhan, Mahadev Chimanaji Apte, Ganpat Sadashiv Rao, Shamrao Vithal, Narayen Chandavarkar, Govardhanram Tripathi and M. B. Chaubal.

Vishvanath Narayen Mandlik was a prominent figure in the public life of India and had distinguished himself in the legislatures, both local and central. He was a great Sanskrit scholar and his work on Hindu Law was regarded as an authority. I came in contact with him in some cases and he treated me kindly. His son, Sir Narayen Mandlik, has been my friend for many years.

Shantaram Narayen was a man of keen intellect and a student of English literature. His language and advocacy were unrivalled. I remember an occasion when Shantaram Narayen and Vasudev Kirtikar were arguing on opposite sides regarding the construction of some provisions of the Bombay Talukdari Act. When Vasudev Kirtikar finished his arguments for the appellant, the court was so convinced about the correctness of Vasudev's view that West turned to Shantaram and said, "Mr. Shantaram, the construction submitted by Vasudev Kirtikar is clearly right. What have you to say?" Shantaram rejoined: "The construction is certainly clear but it is quite the contrary to what my learned friend says it is." Then Shantaram proceeded to propound his view for over an hour at the end of which West said: "You are right Mr. Shantaram. The construction is clear as you have put it." Vasudev in reply could not dislodge the opinion of the judges and Shantaram won.

SOME PRACTITIONERS

Maneksha, Ghanshyam, Rao and Chandavarkar had considerable practice.

Govardhanram Tripathi had high literary qualifications and was a prolific writer in the Gujarati language. His *Saraswatichandra* in several volumes is a standard Gujarati novel and is largely read.

On the Original Side, Latham was Advocate-General. The other leading figures were Lang, Farran, Macpherson, Inverarity, Badruddin and Telang. Pherozechah Mehta's practice was mainly on the Appellate Side and in the mofussil courts. Scott, Raikes and Lowndes came to the Bar later. Badruddin and Telang had good practice. There were other Indians like Vicaji, Dhairyavan and Mankar but they were never in large practice. Davar was in those days practising in the Small Causes Court and he came to the Original Side many years afterwards.

JOHN MACPHERSON

Macpherson had large practice. His language and diction were perfect and he commanded great respect from the Bench. I used often to brief him on the Appellate Side when I was a pleader and we were on friendly terms. It was he who pressed me and ultimately persuaded me to get enrolled as an Advocate on the Original Side.

H. C. KIRKPATRICK

Kirkpatrick who was one of the seniors was a short, thin man. He was staying at the Yacht Club Chambers, and used to come to court on a cycle. A very amusing incident about him occurred in the court of Justice Tyabji. He and Davar were appearing on opposite sides in a suit between two English firms. The correspondence between the Bombay Offices and the Head Offices in London had been disclosed as usual. Davar was reading the correspondence between the Bombay Office and the Head Office of his clients. One letter of a particular date was not in the

compilation. Its receipt, however, was referred to in the next letter from the Head Office. When that next letter was being read, Kirkpatrick demanded that the letter that had not been disclosed but the receipt of which had been acknowledged in that subsequent letter should be disclosed. Davar said that that letter was merely formal and there was nothing in it relevant to the issues in the case. Kirkpatrick, however, insisted on the production of that letter. Davar told the Judge that he would hand over that letter to him and the Court would see that it was absolutely immaterial. Davar handed over the letter to the Judge who after reading the letter turned to Mr. Kirkpatrick and said that there was nothing in that letter of any relevance and he should not worry about it. Mr. Kirkpatrick, however, insisted that he was entitled to have a look at it. The judge handed over the letter to Kirkpatrick. All that the Bombay Office had said in the letter was to this effect. "We have engaged on our behalf all the leading counsel here while the other side has succeeded in securing the services of a counsel whose sun has set long ago." Kirkpatrick must then have realised the truth of the saying "where ignorance is bliss it is folly to be wise."

J. D. INVERARITY

Inverarity was foremost among the practitioners on the Original Side. In his arguments he was always to the point and effective. He was very good at cross-examination and got out from a witness what he wanted in the shortest possible time. There are some clients, however, who do not appreciate this, and are disappointed if their counsel does not lengthily cross-examine their opponents. I remember being present in court when a suit between two Arab merchants who were on very bitter terms was being fought. Inverarity was instructed by Mr. Gulabchand of Edlow, Gulabchand and Wadia and the Arab client was sitting behind him. Inverarity rose to cross-examine the

plaintiff and finished in three quarters of an hour getting out from the witness all that he wanted. When he sat down, the defendant was surprised and annoyed and spoke to Gulabchand in Hindustani something to the following effect: "Why have you got me a Barrister who cross-examines the plaintiff for such a short while? That rascal should have been battered in cross-examination for a couple of days."

Inverarity had a marvellous memory. I remember a case that was being argued before Justices Chandavarkar and Ashton, in which Inverarity and I appeared for the plaintiff and Raikes appeared on the other side. The evidence had already been taken before Justice Tyabji and he having gone on leave before he could deliver judgment, this Bench of two Judges was appointed to hear arguments and give judgment. The Paper Book containing the evidence ran into seven or eight hundred pages and the arguments lasted for a full week. One day during the course of argument, reference was made to a certain statement that counsel knew had been made by a witness but neither Raikes nor myself could spot the place where it appeared in the Paper Book. Both Raikes and I were turning the pages in order to find that particular answer. At that moment, Inverarity stepped in and asked me what we were fumbling about. I told him what we were searching for and he at once said "Turn to page so and so and you will find it just at the top of that page." We turned to that page and we found it.

He never made any notes and never made any marks in his brief. He kept no Library of Law Reports, but he read the Law Reports in the High Court Library and whenever occasion arose, he could put his hand on the wanted reference. He died in Bombay and his loss was keenly felt by the Court and Bar. The Courts closed for a day in respect of his memory.

BASIL SCOTT

Scott was tall and had a commanding personality. He was, however, not effective as counsel and was a poor cross-examiner. Once he put an argument, he was indifferent whether the judge had understood it properly and grasped the point. If the junior counsel sitting by him urged him to make sure that the judge had caught the argument advanced, he would say: "I have put the point. It is for him to understand it. I cannot repeat it." Once I was appearing with him as his junior. Scott began the cross-examination of a witness on the other side at about quarter past four. A few minutes before five, he turned to me and said: "I think we have nothing more to ask him." In my view there was considerable room for further cross-examination. I knew that Scott was not going to attend to the case next morning as he had to be in another court. I therefore asked him not to finish the cross-examination that evening. The next day I resumed the cross-examination and took nearly an hour in the course of which I venture to say I got from the witness some important admissions.

E. B. RAIKES

Raikes was a hard-working and tenacious lawyer. He was, however, excitable and if either the judge or the opposing counsel contradicted him or controverted his argument, he used to clench his fists and bite his lips. When we were engaged on opposite sides in a suit by the Official Assignee against the Shirazees which was heard by Justice Beaman for many days, I had a little row with him.

Raikes was for the plaintiff. Branson was for some defendants and I appeared for other defendants. Though Branson on behalf of his clients was cross-examining the plaintiff's witnesses first, he did so only in a general way leaving the cross-examination in detail to me. Raikes had just finished the examination-in-chief of a witness and Branson had risen to cross-examine him. I expected that

my turn for cross-examination would come in half an hour and that my cross-examination would last for some hours. There was a case on the Board of Justice Davar in which Raikes and I were appearing together. That case was not expected to come on for some days and so we had made no arrangements about it. Justice Davar's Board, however, suddenly collapsed and our case was expected to be reached in a short time. The Attorney instructing Raikes and me in that suit came to Beaman's court where we were and asked Raikes to go to Davar's court. He told the attorney to ask me to go there. When the attorney spoke to me I explained to him that I would have very soon to cross-examine the witness here and my cross-examination would take some hours and so Raikes could well go into Davar's court and his junior could take notes of my cross-examination.

The solicitor went to Raikes again and told him this. On that Raikes rose from his seat and came to me and biting his lips said "I ask you as Advocate-General (he was then acting Advocate-General) to go to Davar's court." I was very annoyed at his behaviour and used unparliamentary language saying "The Advocate-General be blowed." This upset Raikes very much and he turned to proceed to go to Davar's Court. In his excitement while going down the steps of the dais, he missed a step and fell down. I was subsequently informed that he told Justice Davar that his junior (myself) refused to get into the case and asked for an adjournment which was granted. All this happened before the recess hour. When I was told what had happened in Davar's Court, I went to that Court at 3 p.m. and explained the real facts to the learned Judge.

SIR THOMAS STRANGMAN

Strangman was very industrious and hardworking and always worked himself up to believe in the absolute justice of the case of his client. We were often together on one side or on opposite sides in various cases. He was appointed

Advocate-General in succession to Basil Scott. His appointment at the time created some surprise as there were some counsels in good practice who were senior to him. At one time he retired from practice and M. R. Jardine was appointed in his place. He came back later and was re-appointed Advocate-General. It was said that when Marten retired, Strangman was sounded whether he would accept the Chief Justiceship. But he was not willing to take it. When I visited England in 1926 and 1927 and again in 1929, I met him in London.

D. N. BAHADURJI

I knew his brother the late Dr. K. N. Bahadurji who was in public life with Pherozeshah and myself. Ever since I came to know Bahadurji, we have been good friends. Bahadurji is a man of considerable courage and self-confidence. He always stands up for what he thinks is the right view and maintains his view obstinately. He was once offered acting judgeship but he did not take it. He acted as Advocate-General twice. Mr. Bahadurji and Prof. K. T. Shah were appointed by the Congress to report about Indian Public Debt incurred by the Government of India. Their report recommended the repudiation of the country's debt which was incurred without the consent of the people of India. This led to the insertion of stringent safeguards for British interests in the Government of India Act of 1935.

M. A. JINNAH

Jinnah came to the Bar in 1895 when I was still on the Appellate Side. After I came over to the Original Side, I came in contact with him and we used to appear together as well as against each other in various cases. Jinnah had always, even in his junior days, shown considerable independence and courage. He never allowed himself to be overborne either by the Judge or the opposing Counsel. Once Strangman and Jinnah were briefed together in a case and Jinnah attended a consultation in

Strangman's Chamber. It was said that during the consultation, Strangman spoke to Jinnah in a manner which the latter regarded as insulting. Ever since, Jinnah always refused to go into Strangman's room for consultation and they never talked to each other. I remember an episode in the court of the late Justice Mirza. Jinnah and myself were appearing on opposite sides and there were other counsel appearing for some of the various parties in the suit. During the course of argument, Jinnah addressed the judge in a manner which the judge resented. Justice Mirza told Jinnah that he was committing contempt of court. Strangely enough, the judge turned to me and said "Don't you think Mr. Jinnah is guilty of contempt of court"? It was indeed stupid of the judge to have put such a question to me. I answered "It is not for me to give an opinion whether Mr. Jinnah had committed contempt or not. It is your privilege to determine that but I can say this that knowing Mr. Jinnah as I do, he could never have intended to insult the court." Jinnah thereafter ceased to appear before this judge for some time.

I came in close contact with Jinnah in public life. We were together in the Congress for many years. We led the agitation against the Simon Commission in Bombay. We were together in the old Imperial Legislative Council and the Indian Legislative Assembly and also at the Round Table Conferences. Our personal relations have always been cordial. In the part "Politics" I will refer to him again.

PERSONAL FRIENDS AT THE BAR

AT the bar, I have made many friends but my friendship with Kanga, Bhulabhai, Taraporewala and Munshi has been very intimate and lasting.

JAMSHED KANGA

Jamshed Kanga joined the bar as an advocate in 1903. He soon afterwards came in contact with me and appeared as my junior in many cases. By his industry and devotion to the profession, he soon attained a prominent position at the Bar which he still enjoys. My exhortation to young members of the Bar to take part in public affairs has had no effect on Kanga who has devoted himself wholly to his profession. On my resigning the additional judgeship in October 1920, Kanga was appointed in my place. In the year 1922, Sir Thomas Strangman resigned the post, of Advocate-General and an appointment had to be made to fill the vacancy. I was then a member of the Executive Council of the Governor of Bombay in charge of the Legal Department. Proposals for filling the vacancy had to be initiated from the Legal Department. The choice lay between Kanga who was then Additional Judge and Bhulabhai Desai. Both were my personal friends for whose qualifications, I had a high opinion. Making a choice was therefore difficult. Ultimately, however, Government decided to appoint Kanga. He held the appointment till the year 1935 when he resigned. He was knighted in 1928.

VICAJI F. TARAPOREWALA

Taraporewala was for sometime practising as pleader in Rajkot. Then he became a Barrister and began to practice at the High Court. He soon made progress and was briefed with me as my junior in many cases. He also like Kanga has not taken any part in public affairs. In May

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1924, he was offered an Additional Judgeship which he accepted. He resigned his judgeship in 1926 and reverted to the Bar as he was not given one of the permanent judgeships while another Additional Judge Mirza Ali Akbarkhan who was junior to him was given the appointment. He acted as Advocate-General on several occasions.

BHULABHAI DESAI

It was in the year 1895 that I met Bhulabhai Desai as a young boy studying at College. His father Jivanji Desai who was practising as a Pleader at Bulsar, was one of the voters for the election of a member of the Legislative Council of the Governor of Bombay to represent the Northern Division of the Presidency. Gokuldas and I were contesting the seat. I visited Jivanji at his house at Bulsar and he agreed to vote for me. If I remember right, Bhulabhai was present at the interview. Bhulabhai after getting his M.A. degree became Professor of Economics at the Gujarat College, Ahmedabad. He then became an Advocate in 1905 and joined the Bar.

After that Bhulabhai appeared in many cases with me as my junior. He soon came to the front rank. In those days, my complaint was that young people at the Bar were not taking their due part in public affairs and I used to take every opportunity to tell young members of the bar that it was their duty to take part in public activities. Bhulabhai was a member of the Liberal Party for many years. At the Bombay session of the Federation held in 1927, he supported the main resolution for the boycott of the Simon Commission. After his resignation from the Liberal Party in 1931, he became an active member of the Congress. My personal relations with him became very close and have remained so. He is an impressive and fluent speaker on the platform and has made his mark as leader of the Congress opposition party in the Central Legislative Assembly. He acted as Advocate-General for some time.

RECOLLECTIONS AND REFLECTIONS

When I was knighted in 1919, Bhulabhai in his letter of congratulation to me at Calcutta said:

2nd January 1919

My Dear Chimanlal,

On this unique occasion I prefer a letter to a telegram for the former strikes me as conveying a more personal note than the latter.

The high distinction conferred upon you does not come to anybody as a surprise; for it has been richly earned by quiet and useful services rendered to the public cause for a quarter of a century. As Beaman would say, you look so infernally young that it is difficult for me to go back so far as the commencement of your public career.

The distinction bears to my mind a very personal aspect. I have been far removed from you in public life for the reason that I have made comparatively small progress in that direction but in the profession and in personal friendship, I claim to stand as near to you as almost anybody I can think of outside your family. I rejoice in the honour as if it was conferred upon me.

This is the first instance of a member of the Bar having attained to this position. Yet, you know, as well as I do that the Bar here is such a medley that one regrets they will never appreciate this at its proper worth. Your real satisfaction is duty well done and next after that the appreciation of those who have the sense and the sanity to see where the true interests of India lie.

May God spare you long to enjoy this well-merited distinction and to serve the best interests of the country which you love and serve more truly than those who profess to do so.

Yours sincerely,
B. J. Desai

PERSONAL FRIENDS AT THE BAR

These extracts show the regard and friendly feeling he entertains towards me. It also shows that Bhulabhai was not till then an admirer of Congress politics.

K. M. MUNSHI

Hardeyram Anupram, uncle of K. M. Munshi was a great friend of my father. Munshi's father Maneklal who was a Deputy Collector was also a friend of my family. In the year 1895 when there was a keen contest between me and Goculdas Parekh for a seat in the Bombay Legislative Council, Maneklal was one of the voters and he voted for me.

When young Munshi became an Advocate and joined the bar, he came in contact with me and we worked together in many cases. Munshi soon began to take part in politics. He was a member of the Congress and the Home Rule League till 1920 and resigned from the League and the Congress along with Mr. Jinnah in that year. He represented the University in the Bombay Legislative Council for many years and took a leading part in the passage of the University Bill of 1927. It was not till 1930 that he joined the Congress again. When Mr. Gandhi started the Dandi march and the non-co-operation movement, I vividly remember Munshi coming to my Chamber one evening and telling me that he had decided to join the Congress. I tried to persuade him not to do so but I found that he had worked himself to such an emotional pitch that my advice would have no effect on him. He went headlong into the movement and suffered imprisonment for nearly two years.

When in the early part of 1937, ministries were going to be formed under the new Act, Munshi came to me and sought my advice as to what department he should take in the ministry. I advised him to get the Legal and Home portfolios. As Home Minister he acted strongly in putting down riots and disturbances. In other directions his very

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strength and determination led him and the Congress Ministry to disregard all opinions but their own and led to considerable public discontent. Our personal relations in spite of violent differences of opinion have remained most friendly throughout. Munshi's output of literary work is really phenomenal. With his large practice as a lawyer, one wonders how he is able to turn out such a large quantity of literary work. He has no less than forty publications of merit to his credit.

RUSTOM WADIA

In many cases Wadia worked as my junior, specially in the court of Justice Beaman where he was much in demand. Wadia besides practising as a lawyer was running the Automobile Company. Ever since 1905 upto 1937, all the motor cars that I bought from time to time were supplied by that Company. Since 1926, when I began going to Europe every year, I and Wadia used to meet very often in London, Vienna and other places and became very friendly.

N. H. MOOS

Moos was a solicitor and partner in the firm of Payne & Company. He attended to the litigation between Haji Bibi and the Aga Khan, on behalf of the Aga Khan. Justice Russell who heard the suit complimented him for the able manner in which he had examined witnesses on commission and prepared the case. Moos thereafter qualified as a barrister and joined the Bar. He later took the appointment of Official Receiver and continued as such till the post was made stipendiary. From 1932, I and he worked together in various important matters for Kutch State for many years. I and he used to meet in London, Paris, Vienna, Monte Carlo and other places. Since the outbreak of the European War, he has gone to America and he is still there.

SOME CASES

THIS chapter deals with some important cases in which I appeared as counsel. Besides these cases, are also included some important ones in which I did not appear as counsel but which will be of interest to the reader.

DAKOR TEMPLE

The first case of importance in which I appeared soon after enrolment as a Pleader on the Appellate Side was the Dakor Temple Case in 1887. That temple which is situated at the town of Dakor in the Kaira District, contains an idol of God Shree Ranchhodraji who is held in great veneration by the followers of the Vaishnava religion throughout Western India. The temple was built in A.D. 1772 by Gopal Jagannath Tambekar at a cost of one lakh of rupees and the Gaekwar of Baroda endowed in perpetuity the revenues of the villages of Dakor and Kanjeri to the temple. The throne of the idol was covered with gold and silver by H.H. the Gaekwar at a cost of Rs. 1,25,000. Tambekar was the hereditary manager and trustee of the endowed villages. Connected with the temple are many families of Brahmins who are called Shevaks, succeeding to their office by hereditary descent. They were in constant attendance on the idol and performed the daily services and kept in their custody all the cash, ornaments, clothes and other offerings dedicated to the idol. Also connected with the temple were the *Gors* or priests who conducted the pilgrims, their *yajmans* or patrons, to the shrine and performed the worship of the idol on their behalf.

Tambekar and some of the *Gors* filed a suit against the Shevaks under section 539 of the C.P.C. to have them declared trustees of the offerings to the deity and to take accounts of their management. The District Judge of Ah-

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medabad having dismissed the suit, the plaintiffs appealed to the High Court. Telang with Shantaram Narayan appeared for the appellants. Macpherson with Vasudev Kirtikar and Gokuldas Parekh appeared for the respondent Shevaks. I was given a junior brief. The Shevaks took up the position that they were the owners for all secular purposes of the idol who in the spiritual sense they served and contended that all the offerings belonged to them free from secular obligations. The High Court (Justices West and Birdwood) held that Shevaks were Trustees of the offerings, etc., and were answerable as such. They said that it was indeed by strange if not wilful confusion of thought that the Shevaks set up Shree Ranchhodrai as a deity for the purpose of inviting gifts and vouchsafing blessings, but as a mere block of stone, their property, for the purpose of their appropriating every gift laid at its feet. The High Court directed that a scheme be framed for the future management of the temple and its funds, giving due consideration to the established practice of the institution and to the position of the Shevaks. The Court also directed that a Receiver be appointed of the properties of the temple pending the framing of the scheme.

The Shevaks appealed against this decree to the Privy Council and the appeal was heard in 1899. The Shevaks engaged me to go to England to instruct counsel there on their behalf. Sir Henry Maine, the author of *Principles of Hindu Law* was engaged for the appellants. I was present at the hearing of the appeal which was heard by Sir Richard Couch, Lord Macnaughton and a third judge. The Privy Council confirmed the decision of the High Court. A scheme was ultimately framed by the High Court in which suitable provision was made for the maintenance of the body of Shevaks.

THE BHADBHUT CASE

In 1889 an Indian Assistant Collector had his camp at Bhadbhut, a village in the Broach District. At some dis-

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tance from his camp, some Hindus were cremating a dead body on the bank of a river and the smoke emanating therefrom came in the direction of the Assistant Collector's tent. It was alleged that the Assistant Collector ordered the funeral pyre to be extinguished and the body removed from the spot. The incident caused a great sensation at that time and a committee of Bombay citizens was appointed to take necessary measures in the matter. On representations being made to Government, they appointed Mr. Allen, the Collector of Broach, to investigate the matter and to make a report to the Government.

The enquiry was held at Bhadbhut. Mr. Anderson, a Barrister, myself, and the late Motilal Munshi instructed by Gilbert of Payne, Gilbert and Sayani appeared for the villagers in support of the complaint. Pherozechah Mehta appeared for the Assistant Collector. As a result of the enquiry, the Assistant Collector's promotion was stopped for some years.

TILAK TRIALS

On June 13, 1897, there was published in the columns of *Kesari*, a newspaper then edited by Tilak, a report of the proceedings of the festival held in commemoration of the coronation day of Shivaji at Raigarh. On June 22, Rand and Lt. Ayerst were murdered by some unknown persons. The issue further contained a historical lecture about the killing of Afzulkhan by Shivaji, together with the report of speeches made at the festival, one of which was delivered by Tilak himself in which he defended the action of Shivaji as justifiable. In the same issue of *Kesari* were published a collection of Marathi verses describing an imaginary awakening of Shivaji from the sleep of centuries and representing him as lamenting in figurative language the decadence of Maharashtra as well as discoursing upon other matters in a spirit of discontent.

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On July 27, the Government of Bombay instituted a prosecution against Tilak on a charge under section 124A of the Indian Penal Code for exciting disaffection against the British Government. Tilak was arrested the same night in Bombay and an application for bail made to the Chief Presidency Magistrate was refused. An application was then made to the High Court for bail which was also refused. The case was committed to the sessions on August 2, 1897 and an application for bail was made to Mr. Justice Tyabji, the sitting judge in chambers. The application was made by Mr. Davar who by an irony of fate was the judge who tried Tilak for a similar offence in 1908 and sentenced him to six years' imprisonment. Mr. Justice Tyabji granted bail on deposit of Rs. 50,000 in cash. Tilak was made to wait in the Prothonotary's office till the bail amount was produced. Mr. Dwarkadas Dharamsy was taking interest in the defence. In a short time, he produced the necessary amount and Mr. Tilak was released. I took him in my carriage to Girgaum where he was staying with the late Daji Abaji Khare.

The trial began before Mr. Justice Strachy and a special jury consisting of six Europeans, two Hindus and one Parsee. Tilak was defended by Mr. Pugh, then a leading barrister of Calcutta assisted by Mr. Garth, and the trial lasted for a week and excited great interest throughout the presidency. The court and the galleries were packed and arrangements had been made to accommodate on either side of the Judge on the dais some prominent ladies and gentlemen, both European and Indian. At the end of the trial, the jury was divided in their opinion, six European jurors giving a verdict of guilty while the three Indian jurors held the accused not guilty. Mr. Justice Strachy accepted the verdict of the majority and sentenced Tilak to eighteen months' rigorous imprisonment. An application was made to the judge on behalf of Tilak when the jury retired to consider their verdict, to reserve for the consideration of a full bench certain points of law arising from the

judge's charge to the jury but this was refused. An application was then made for leave to appeal to the Privy Council which was heard by a Bench consisting of Chief Justice Farran, Justice Candy and Justice Strachy. This was also refused. Following this, an application was made to the Privy Council for special leave to appeal and Mr. Asquith (later Lord Asquith) appeared for Tilak in support of the application but it was rejected.

Sometime in October I sought an interview with Lord Sandhurst, the Governor of Bombay, and put to him that it would be a very good gesture on the part of Government if they commuted the sentence passed on Tilak to the period already suffered and release him. I urged that the law had been vindicated by the conviction and the commutation that I suggested would create a very good feeling in the minds of the public who undoubtedly held Tilak in great esteem, while on the contrary, making him serve the full sentence would enhance the bitterness against Government and make Tilak a greater hero. Apparently Government had no use for my advice and no action was taken.

SECOND TRIAL OF TILAK

In 1908 Tilak was again prosecuted under Sections 124A and 153A for certain articles in *Kesari*. He was arrested on June 24, 1908 and bail was refused by the Chief Presidency Magistrate. On July 2, an application for bail was made by Mr. Jinnah on behalf of Tilak to Justice Davar and this was refused.

The trial opened before Justice Davar and a special jury on July 13. At the first trial of Tilak, Davar had appeared for Tilak and Dwarkadas Dharamsy had furnished the bail amount. On this occasion Davar was the judge and Dwarkadas Dharamsy was Sheriff of Bombay and as such, he sat alongside the judge all throughout the trial. Branson, acting Advocate-General, conducted the prosecution and Mr. Tilak conducted his own defence. The trial began on the 13th and ended on July 22.

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The jury were divided in their opinion. Seven jurors who happened to be Europeans gave a verdict of guilty while two who happened to be Indians returned a verdict of not guilty. The judge accepted the verdict of the majority and sentenced Tilak to six years' transportation and a fine of Rs. 1,000. In passing sentence the judge said, "It is most desirable in the interest of peace and order and in the interest of the country which you profess to love, that you should be out of it for some time." The veiled insinuation contained in the words "the country you profess to love" was very much criticised as an undignified sneer on the part of the judge. In contrast to this what Mr. Broomfield, as Sessions Judge of Ahmedabad said in passing sentence on Mr. Gandhi stands in great relief.

After the conviction, Lord Morley, Secretary of State, wrote to Sydenham on July 31, 1909:—

"I won't go over the Tilak ground again beyond saying that, if you had done me the honour to seek my advice as well as that of your lawyers, I am clear that it should not have been so dangerous as the mischief that will be done by his sentence. Of course, the milk is now spilled and there is an end of it."

Sydenham tried to explain his point of view to Morley but he stuck to his opinion and in his letter to Sydenham wrote on August 7,

"Your vindication of the proceedings against Tilak does not shake me. That they were morally and legally justifiable is true enough and that the result may bring certain advantages at the moment is also true. But the balance of gain and loss, when the whole ultimate consequences are counted up, that is the only political fact. Time must show."

On July 1, 1910, Lord Morley issued orders that Local Governments before launching a political prosecution should refer the matter to the Government of India.

TAI MAHARAJ CASE

Tilak was destined to be involved in heavy litigation in what was known as the Tai Maharaj Adoption Case in which very serious aspersions on his probity and character were cast in the judgment of the High Court pronounced in September 1910 and he suffered under that stigma for nearly five years till in January 1915, he was thoroughly vindicated by the judgment of the Privy Council on appeal who held that there was not the slightest justification for what the High Court had said about him and reversed the judgment of the High Court with costs throughout. The litigation arose under the following circumstances:

One Baba Maharaj who was possessed of considerable property died in 1897 leaving a widow Sakvarabai popularly known as Tai Maharaj who was *enciente*. He directed that if the widow did not give birth to a son or if the son born was short-lived, a boy should be adopted with the consent of his executors and trustees. Tilak and Khaparde were two of the four trustees named. In July 1900, a boy who was selected by Tilak and Khaparde was duly adopted and a deed of adoption was executed to which the widow was a party. The widow subsequently disputed the adoption and adopted another boy. A suit was filed by three of the trustees including Tilak and Khaparde to establish the first adoption. The Subordinate Judge who heard the suit held in favour of the adoption. Tilak was under cross-examination for five days in the trial court.

The High Court (Justices Chandavarkar and Heaton) reversed the decree of the Subordinate Judge. Justice Chandavarkar in his judgment stated, "We are driven to believe that a considerable number of men of good position have conspired together to give false evidence." The Privy Council characterised this conclusion as being of the most serious character amounting to plain judicial finding of conspiracy and perjury. They further proceeded to say "It is *a priori* difficult to understand how these

men with no object to gain and no interest to serve are supposed to have entered into the conspiracy and committed the perjury which the High Court found. Their Lordships think the conclusion came to by the learned judges to be entirely unwarranted by the facts."

With reference to the serious irregularity of certain statements made by witnesses in a criminal Court being used in the civil suit without having been put to the witnesses, the Privy Council said: "Their Lordships have observed with regret and with surprise that the general principles and the specific statutory provisions had not been followed. The verdict of the High Court is an inferential verdict—nonetheless sweeping on that account—but an inferential verdict actually of perjury." The Privy Council quoted the following passage from Justice Chandavarkar's judgment:

"The question here is difficult. She was indeed willing to adopt. But was she a free agent when she adopted the fourth plaintiff, assuming that she had adopted him; or was she forced into it against her will by unconscientious means used by the first two plaintiffs, i.e., Tilak and Khaparde, and unfair advantage taken by them of her ignorance and youth, and of other fiduciary relation between them."

The Privy Council then observed:

"With much respect to the learned judge, it is, notwithstanding the protracted arguments before their Lordships, even now somewhat difficult to gather what are the legal categories under which the attack upon this transaction is made. Unconscientious means are mentioned and unfair advantage is mentioned. It is needless to ask whether this implies fraud because their Lordships are of opinion that no sort of unconscientious means was employed by these trustees from beginning to end of this transaction and that no unfair advantage was either taken or meant, throughout the

whole course. It is true that the adoptive mother was a young widow, probably easily guided, and that the trustees are admitted to have been men of great influence and strong personality, but Their Lordships are of opinion that these were used in no respect unduly, but with propriety and entirely in the interests of the proper administration of the estate. Their Lordships cannot approve of the idea that in India the law would make the possession of reputation or high standing an element of suspicion. If it were so, then the result in India would be to import *pro tanto* a disqualification and disability into the position of reputable men."

KESHAVJI ISSAR vs. G. I. P. RAILWAY

The plaintiff sued the G.I.P. Railway for damages for injuries sustained by him through the negligence of the railway. His case was that he travelled from Bombay to Sion and that at the Sion Station, the train overshot the platform, that at the spot where the train stopped it was dark and no warning was given that the train had passed the platform and so in descending he fell heavily and was seriously injured and disabled from attending to business for a long time. The trial judge, Justice Tyabji held in favour of the plaintiff and awarded damages.

Subsequently the defendant railway applied for a review of the judgment on the ground that since the trial the defendant had discovered new and important evidence but Justice Tyabji rejected the application. The Railway Company appealed and made an application for permission to examine one witness. The Appeal Court consisting of Chief Justice Jenkins and another Judge granted the application and ordered that "further evidence" be taken. Several witnesses were accordingly examined in the Appeal Court. Then the Appeal Court decided that they should visit the scene of the accident under conditions approximating as closely as possible to those which prevailed when the plaintiff met with his injury. Accordingly one evening

40 minutes after sunset (at which time the conditions were thought to be as nearly possible like those obtaining at the time of the accident) the Court along with the legal advisers of the parties visited Sion Station and there they sat in the same carriage in which the plaintiff was travelling at the time of the accident and made a thorough investigation of the material conditions accompanying the accident. Having done this, the judges came to the conclusion that the accident must be attributed to the plaintiff's own carelessness and that the Company was not liable for negligence. On the additional evidence recorded, the Appeal Court declared: "The result may be stated in a single sentence. There is an end to the possibility of relying upon the plaintiff's testimony." The plaintiff appealed to the Privy Council.

The Privy Council strongly criticised the action of the Appeal Court in admitting additional evidence and said: "The Appeal Court had no jurisdiction to admit this evidence, it was wrongly admitted and does not form part of the evidence in this appeal." Commenting on the action of the Appeal Court Judges in visiting the scene of the accident under what they called conditions approximating as closely as possible to those which prevailed when the plaintiff met with his injury, the Privy Council observed that the case was decided by the Appeal Court not on the testimony given at the trial as to what took place on the night of the accident but by the judges' observation of what they saw on another night altogether. Their Lordships found it impossible to admit the legitimacy of such procedure or the soundness of such conclusions. In the end, they reversed the judgment of the Appeal Court with costs and restored the judgment of Justice Tyabji. The respondents were also made to pay the cost of the Appeal.

FERNANDES vs. COL. WRAY

At the beginning of 1900 there was a banquet at Kolhapur given by the Maharaja of Kolhapur at which Col. Wray,

the Political Agent was present. Soon after the banquet, it was alleged that poison had been put by some one into either the drinks or some food and that this was aimed at Col. Wray. Fernandes who had looked after the catering was suspected and he was arrested and tried but was ultimately acquitted. Col. Wray took furlough and he left Kolhapur on March 6, 1900. He vacated the government bungalow that he was occupying at Kolhapur and sold his furniture before leaving. He arrived in Bombay on March 7, 1900 and was residing with a friend at Malabar Hill, having planned to sail for England on March 10. On March 8 Fernandes presented a plaint to Mr. Justice Russell to recover Rs. 10,000 as damages from Col. Wray for his wrongful acts in getting him arrested and prosecuted at Kolhapur. Mr. Justice Russell rejected the plaint on the ground of want of jurisdiction.

Against this order, an appeal was filed on the same day and notice of appeal was served on Col. Wray in Bombay on March 9. On March 10, Col. Wray sailed for England. The appeal was heard on December 7, 1900 by Chief Justice Jenkins and Justice Tyabji. The question before them was whether the fact of Col. Wray having abandoned his residence at Kolhapur and being in Bombay for a period of four days was sufficient to satisfy Clause 12 of the Letters Patent so as to give jurisdiction to the High Court to entertain the suit. Both the learned Judges held that as Col. Wray had no residence at Kolhapur or anywhere else and was in Bombay, the Court had jurisdiction. On that, the summons was served in the ordinary course on Col. Wray. Later on, the plaintiff applied for an issue of commission to the then Political Agent in Kolhapur for the examination of certain witnesses. This was granted but Government declined to ask the Political Agent to execute the commission. On that there was tension between the High Court and Government. Ultimately, the suit was amicably settled.

RECOLLECTIONS AND REFLECTIONS

"CHAMPION" CASE

In 1900 W. A. Chambers, a leading architect who was the Editor of the Weekly paper *Champion* which was supporting the Congress politics of those days, filed a suit for libel against Kabraji, the Editor of *Rast Goftar* for certain observations made in *Rast Goftar* against *Champion* and its editor. Revett, Carnack and myself appeared for Chambers. The case was heard for several days before Mr Justice Tyabji and he decided in favour of the plaintiff. In the course of his judgment, Tyabji held that the attack made by *Rast Goftar* was defamatory, and he spoke highly of the Congress and said that he considered it the highest honour conferred upon him when he was chosen to preside over the Congress session in Madras.

After the plaint in this case was filed and before the case came on for hearing, Wacha who was the Bombay correspondent of the paper *Madras Standard* in his weekly letter referred to this case and characterised *Rast Goftar* as "a moral plague." He also commented on the merits of the case. On that, proceedings in contempt of court were taken against Wacha. The matter was heard by Justice Russell, Scott, Pherozeshah and myself appeared for Wacha. The judge imposed a fine of Rs. 300 on Wacha.

Some time after the *Champion* case was decided Wacha again wrote about the case and said that Bhavnagaree was behind Kabraji in the defamation suit of Chambers against Kabraji and had himself paid the cost of the suit. On this Bhavnagaree filed a suit for defamation against Wacha. The suit came on for hearing before Justice Starling. Scott, Pherozeshah and myself were counsel for Wacha. But as Scott and Pherozeshah were attending the Legislative Council when the suit was called on I was in charge of the case that day. The hearing was however, adjourned and through the intervention of friends it was referred to the arbitration of Sir Narayen Chandra Varkar who was then a judge. Several hearings took

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place before Chandavarkar in the course of which the cheque given by Bhavnagaree for payment of the costs in the *Champion* suit was produced from the Bank. The result was that Bhavnagaree's suit was dismissed by the Arbitrator.

MOOLJI JETHA LITIGATION

The Moolji Jetha litigation went on for many years. One great good that came out of it was the establishment by the Municipal Corporation of Bombay of the Govardhandas Soonderdas Medical College and the manning of that institution as well as the K.E.M. Hospital, entirely by Indian personnel. How that came about is stated in the Part "Municipal Corporation."

Moolji Jetha, a Bhatia, came to Bombay in the forties of the 19th century and established widespread business and amassed great wealth. The Moolji Jetha Market in Bombay was established by him. He had a son called Soonderdas. Soonderdas had two sons, Dharamsy and Gordhandas. Gordhandas was born in December 1874. Dharamsy had a son called Karsondas. Moolji Jetha had made a Trust Deed on October 17, 1872. He had also left a Will dated October 17, 1872 and he died in 1889. Soonderdas died in January 1875 leaving a Will giving to both his sons an equal share. Dharamsy died in 1889 and he also left a Will whereby he claimed that the properties comprised in the Trust of Moolji Jetha as well as in his Will belonged exclusively to him. It was contended that as Gordhandas was born after the respective dates of the trust and the Will he could not take under them and the whole of the trust property passed to Dharamsy as he was born before the date of the trust.

In 1899 Gordhandas filed a suit to have it declared that the Trust wholly failed as the one of the beneficiaries was not born at its date and also that the Will of Dharamsy had no effect. Karsondas, son of Dharamsy, who was then a

minor was made a defendant. Sir Griffith Evans from Calcutta, Davar and myself appeared for Karsondas. In 1901, Justice Russell decided in favour of Gordhandas and held that the Trust failed entirely. Justice Russell ordered that the costs of all parties should come out of the estate provided that the guardians of Karsondas did not file an appeal.

Karsondas on attaining majority tried to file an appeal and prayed for excuse of delay but the application was refused. Gordhandas died in 1902 leaving a Will. He also executed a Deed of Poll of the same date. By these documents, he directed his business to be continued by his executors one of whom was Jamshedji Patel, his Solicitor, a partner in the firm of Manshuklal Damodar and Jamshedji. He provided that in addition to the solicitors' firm getting all their costs for work that they may do for the estate, Jamshedji was to get a remuneration of one per cent on the income of his estate. Gordhandas by these documents gave his widow an authority to adopt a particular boy.

Bhagvandas who was a partner of Gordhandas in the firm filed a caveat to the petition for probate. It was contended on his behalf that the Will which consisted of 40 pages was in the English language with which the testator was not familiar and there was no evidence to show that the testator had understood the various provisions of the Will. Starling, Pherozechah Mehta and myself appeared for Bhagvandas. Justice Russell granted probate. This Will was attested by Jamshedji himself and one of his clerks. On appeal, the Appeal Court excluded from probate the clause about the personal remuneration of Jamshedji. The executors appealed to the Privy Council who restored the decree of Justice Russell. The Privy Council observed:—

“Jamshedji by the course he took, has brought this litigation on himself but after all the question is one to be decided on consideration of the whole evidence and the circumstances of the case.”

Karsondas Dharamsy filed various suits against the executors and trustees of Gordhandas Soonderdas and Chaturbhuj Gordhandas, the adopted son of Gordhandas, but failed in all of them.

One morning Shet Naranji Dwarkadas who was at the time a leading industrialist in the Bhatia community came to me and told me that Lalji Naranji brother of the widow of Gordhandas wished to see me for the purpose of bringing about an amicable settlement between the two branches of the family irrespective of their legal rights as a result of the various suits. I had at that time a very strong prejudice against Lalji because of the evidence he had given in the probate proceedings on Gordhandas' Will. I therefore told Naranji that I did not care to see Lalji. Naranji Dwarkadas, however, ultimately persuaded me to hear what Lalji had to say. Lalji came to me and he impressed me by the way in which he assured me that whatever the legal position created, his great desire was that the two branches of the Moolji Jetha family should make up with each other and act harmoniously and that the parties should agree to leave the whole matter to my arbitration.

I told Lalji to consult his lawyers about his idea of appointing the counsel on the other side as arbitrator. He came to me some days afterwards and said that both Scott and Lowndes who were their lawyers welcomed the idea of a settlement. In October 19, 1908, the parties signed a submission paper appointing me sole arbitrator to settle all matters between the parties. It was expressly provided that the parties waived all legal technicalities, bars and other positions created by reason of litigation determined or pending and it was further stipulated that I was at perfect liberty to determine what in my absolute discretion I considered fair and equitable between the parties. It was also arranged that the parties should appear in person before me and that no lawyers were to represent them.

RECOLLECTIONS AND REFLECTIONS

The arbitration was conducted in a very friendly spirit and everything was settled finally to the satisfaction of both parties sometime in 1910. Chaturbhuj Gordhandas on the conclusion of the arbitration wrote to me as follows:

"Please accept our best thanks for the fairness and impartiality shown by you while settling some difficult questions to the entire satisfaction of both the parties."

My fees as arbitrator were fixed in the reference paper at a substantial figure. This at the time created jealousy in some quarters. One Judge so far forgot himself as to make reference to it in a vicious manner in a suit before him. I was appearing on one side in the case and this award was incidentally referred to in the proceedings. The learned Judge said: "Is that the award in which the arbitrator got a fat fee and the parties settled between themselves after a few sittings?" I replied "Your Lordship is much mistaken; those arbitration proceedings lasted for more than two years and the arbitrator was not as lucky as another arbitrator who got his fee of Rs. 20,000 after holding no more than two sittings as the parties at that stage settled between themselves and the arbitrator had nothing further to do." The arbitrator I referred to was the Judge himself when he was at the Bar.

I remember how one arbitrator took one lakh of rupees as his fee under very peculiar circumstances. The partners in a firm had fallen out and had gone to court. Then they referred their disputes to an arbitrator and he was also asked to wind up the partnership and determine the monetary obligations of the partners *inter se*. The parties had previously got the arbitrator appointed receiver of the assets of the firm and he was in possession of the assets as such receiver at the date of his award. In the award, he put down his remuneration as arbitrator at one lakh of rupees and in his capacity as receiver, paid this amount to himself as arbitrator. The fee was out of

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all proportion and ordinarily it would have been open to the parties to go to court to have a reasonable remuneration fixed for the arbitration as the amount of remuneration had not been fixed in the reference to arbitration.

The arbitrator, however, was too clever for them. In his award, he had stated that the firm had kept two sets of books, one for income-tax purposes and another showing the real profits of the firm and that he had made up the accounts of the firm on the footing of the books showing the genuine state of affairs. With this statement in the Award, the parties could not venture to go to court as they would have rendered themselves open to criminal proceedings for keeping false accounts to deceive the income-tax authorities.

THE CAUCUS CASE

In 1907 the general elections to the Bombay Municipal Corporation were to take place. At that time, one of the constituencies was that of the Justices of Peace for the town and island of Bombay. They had to return 16 members. Sir Pherozeshah Mehta was consistently returned for many years by that constituency. Pherozeshah had by his services both inside and outside the Corporation acquired a commanding position in the deliberations of the Corporation. Some European members as well as the then Municipal Commissioner, Mr. Sheppard, formed a clique which was in those days called the 'caucus' to defeat Pherozeshah at the polls. Harrison, the Accountant-General, Gell, the Police Commissioner and Lovat Fraser, the then Editor of *The Times of India* took a leading and active part in the campaign. Mr. Lowndes, who was then at the Bar, canvassed busily among the lawyers to secure support for the 'caucus' candidates. I knew that Mr. Inverarity who had great regard for Pherozeshah was unwilling to vote against him but he was ultimately persuaded to join in the campaign.

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The Justices' constituency consisted of men who were all nominated to that Office by Government and a very large number of them were Europeans. The 'caucus' organisers made a ticket of 16 persons whom they recommended for election by the Justices and the Justices were exhorted to vote for that ticket from which Pherozezshah was, of course, excluded. For many days, great excitement prevailed in the city and there was deep public resentment in Bombay, as also in many other parts of the presidency at the activities of the 'caucus.' Their attempt to oust Pherozezshah who was the builder of the Bombay Municipal Corporation's constitution and who had guided that body to a high level of efficiency and prestige was condemned. The following were the 16 names put forward by the 'caucus':—

H. R. Greaves
D. M. Silva
Haji Yusuf Haji Ismail
R. T. Nariman
Gulamhussein K. Ebrahim
Jamshedji A. Wadia
James MacDonald
Cawasji Jehangir Readymoney
N. V. Mandlik
Phiroze C. Sethna
Mahomed Hajibhai Lalji
Dinanath B. N. Dandekar
Jehangir R. Dubash
Shek Ibrahim Hafiz
D. B. Petit
Vasantrao A. Dabholker

The poll was taken in the Municipal Hall on February 21, 1907 at a meeting of the Justices when the Municipal Commissioner, Sheppard presided. When the meeting began, I raised a point of order that the election that was being held was illegal on the ground that the Municipal Commissioner had altered the date of the election which he had once notified and that it was not competent

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for him to do so. Sheppard overruled my objection. The result was declared the next day and 14 out of the 16 'caucus' ticket candidates succeeded and Pherozechah Mehta stood seventeenth. Public indignation on the declaration of the result was very great.

The organisers of the 'caucus' had aimed at diminishing the authority and prestige of Pherozechah but their action had the contrary effect of very much enhancing his popularity and influence on the public mind. The 16th person who got in, was Suleman Abdul Wahed of Ladha Ibrahim & Co., who had contracts with the Municipal Corporation and was, therefore, under the Municipal Act, disqualified from being a Councillor. A petition was presented to the Chief Judge of the Small Causes Court to declare that he was disqualified from being a Councillor. The Chief Judge held that Suleman Abdul Wahed was disqualified and Pherozechah Mehta who stood 17th got automatically elected to the Corporation.

Bhaishankar Nanabhai who was a sitting member of the Corporation and Senior partner in the solicitors' firm of Messrs. Bhaishankar Kanga and Girdharlal filed a suit against the Municipal Corporation of Bombay, the Municipal Commissioner and the 16 persons who were elected Councillors at the J.P.'s election to have it declared that the election was void and that the sitting Councillors may be declared as automatically continuing to be members under one of the provisions of the Act. The main ground was that the Municipal Commissioner having fixed the J. P.'s election to take place on February 13, the polling should have taken place a week later on February 20, but the Municipal Commissioner altered the dates to the 14th and 21st of February respectively. It was contended that the Municipal Commissioner having once fixed the dates had no power to alter them and that the polling not having taken place on February 20, the election held on February 21, was no election at all.

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I appeared with the late P. J. Padshah for Bhaishankar, Inverarity, Scott and Lowndes appeared for the Municipal Commissioner and the Corporation. Among the issues raised by Inverarity, there was one which challenged the jurisdiction of the Court to try the suit. The suit was heard by a special Bench consisting of Sir Lawrence Jenkins, the Chief Justice, and Justice Batty. In order to be able to decide the question of jurisdiction properly, the Court went into all the issues that were raised in the case. They however, ultimately decided the suit on the question of jurisdiction and held that as the right that the plaintiff was claiming, *viz.*, to have it declared that he continued to be a Councillor, was a creature of the Municipal Act which again provided the remedy of an appeal to the Chief Judge of the Small Causes Court, the plaintiff must go to that tribunal. The suit was therefore dismissed.

The hearing of the case created great interest and the Court was crowded by members of the legal profession as well as by the public. In delivering judgment, Sir Lawrence Jenkins complimented me by saying that I argued the case "with considerable skill and resource." The next day after the judgment was delivered the Chief Justice sent for me in his Chamber. Justice Batty was also there. The Chief Justice then told me that he and Justice Batty felt that they could not allow this opportunity to pass without communicating to me personally their high appreciation of the manner in which I conducted the case. He added "Mr. Inverarity if he had appeared on your side, could not have done better."

A Petition was filed in the Small Causes Court by Sir Balchandra Krishna, Mr. Hormusji A. Wadia and Mr. Jehangir B. Petit to set aside the election on the ground of its not having been a free and fair one and on account of the form of the voting papers etc. The case was heard by the Chief Judge, Rustomji Patel and his successor Mr. N. W. Kemp. Jinnah appeared for the petitioners. Some inci-

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dents were witnessed, some damaging disclosures were made and some Justices had to look foolish. In the result, the Chief Judge upheld the election. A representation was thereafter made to Government by Gokuldas Parekh, H. S. Dikshit and myself pointing out the gross impropriety of official interference in the election but it met with no better fate. A mass meeting was held at Madhav Bag on April 7, 1907 presided over by G. K. Gokhale to give expression to the universal feeling of condemnation of the unconstitutional action of Government officials and a memorial was drafted to the Viceroy praying for enquiry into the affair. The Indian Government's reply to the memorial was that the matter was fully investigated by the Law Courts and they had no orders to pass in connection with the prayers of the Memorialists.

SUITS AGAINST AGA KHAN

In the year 1908, one Haji Bibi, a member of the Aga Khan's family, filed a suit against him claiming that all the offerings and presents that he got from his followers were for the benefit not of himself alone but of all members of the family. Bahadurji, myself and Bhulabhai Desai appeared for the plaintiff and Inverarity appeared for the Aga Khan. The suit went on for many days and 128 issues were raised. For a considerable time Bahadurji conducted the case. Later, he left the case to Bhulabhai Desai. I never attended except once to argue a point of law. In those days counsel in the case who did not attend at the hearing was paid 2 G.Ms. (30 rupees) for each hearing by way of what was called "nominal refresher." The time occupied in the hearing of the case may be judged from the fact that though I never attended except on one occasion, I got by way of these nominal refreshers something like Rs. 2,500. At a later stage in the case, Bhulabhai also withdrew under the following circumstances and thereafter there was no appearance for the plaintiff.

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During the progress of the trial, the Judge was told that if questions were put to the witnesses in Court, similar to those put to witnesses examined on Commission and if such questions and answers were published in the newspapers, there would probably be an outburst of violence between the Muslim communities in Bombay. When the Aga Khan was being cross-examined, a question was put to him which the Judge thought was calculated to cause excitement and animosity. The Judge said so to the counsel who was cross-examining the Aga Khan but the counsel insisted on putting the question and the Aga Khan answered it. The Judge then intimated that if similar questions were to be put, he would clear the court. The next question being of the same character the Judge ordered the court which was then crowded with Muslims to be cleared. While the court was being cleared, the Judge asked counsel for the plaintiff and counsel for the Aga Khan to come up to him and he explained to them the reasons for ordering the court to be cleared. After the court was cleared, the plaintiff's counsel intimated that under the circumstances, he had instructions not to proceed with the case.

Ordinarily in the absence of the plaintiff, the hearing would have stopped there and the suit would have been dismissed. Inverarity contended that the plaintiff by withdrawing could not deprive the defendant of the judgment to which he was entitled and that the Court should deliver judgment on the materials before it. Russell accepted this position and gave judgment in the Aga Khan's favour holding that all offerings were made to him personally and that the other members of the family were not entitled to their benefit. In his judgment, Justice Russell highly complimented Inverarity for his able conduct of the case and also Moos, the solicitor instructing him for the great skill with which he had prepared the case and had examined the witnesses on commission.

In 1930 I appeared for the Aga Khan in a suit filed against him by some members of his *jamat* at Karachi for a declaration that the Jamatkhana and other properties in Karachi held by the Aga Khan did not belong to him personally as he claimed, but were the properties of the Jamat. The case was to be heard by the Judicial Commissioner's Court. I had to go to Karachi more than once for this case.

Before I went to Karachi for the final hearing, the solicitors of the Aga Khan had a conference with me, and the late Dinsha Mulla and we laid down the lines on which the case was to be put before the court. There were several points arising and we came to the conclusion that there was nothing in one of them and that we should not argue it. The case lasted for several days. In consultation with the pleaders at Karachi, I intimated to them my own and Mulla's view about that particular point and they agreed. When I had finished arguing all the points we had decided to urge, I turned to the Karachi pleader and asked him whether we stuck to our view not to press that particular point. He said "Why not put it? Nothing will be lost." So I urged that point also and to our surprise when judgment came, we won the case mainly on that point.

This reminds me of what Sir Lawrence Jenkins once jocularly said about Sir Charles Paul who was Advocate-General at Calcutta. He used to press every point, good, bad or indifferent. Jenkins asked him once why he was doing so. His answer to Jenkins was: "You never know when you catch the fool sitting up there," meaning the judge.

MOTILAL SHIVLAL vs. BOMBAY COTTON MFG. CO.

In April 1910, Motilal Shival, a rich Hyderabad banker whose affairs in Bombay were managed by one Dani sued the Bombay Cotton Manufacturing Co., for two lakhs of rupees being the sum standing in the books of the company as due to him. The defence was that the defendant com-

pany did not owe anything to the plaintiff and that the entries in its books were the result of a fraudulent arrangement between Dani and the persons in charge of the management of the three companies, Bombay Cotton, Tricumdas Mills and Luxmidas Mills, whereby the indebtedness of Tricumdas Mills and Luxmidas Khimji Mills which were insolvent was transferred to the Bombay Cotton Manufacturing Company, and that no money had really passed from Motilal Shivilal to the Bombay Cotton Mills.

The case was heard by Justice Beaman. I appeared for the plaintiff, Motilal Shivilal. Dani, the *munim* of the plaintiff, was the principal witness on his behalf and in order to shake his credit, he was severely cross-examined with regard to certain alleged falsifications of accounts and balance sheets of the Tricumdas Mills of which he was a Director. Justice Beaman disbelieved Dani's evidence and held that the transaction on which the suit was based was fraudulent. With regard to the two witnesses, Devji and Tricumdas Dwarkadas, called for the defence, the judge relied on their evidence and said, "Very seldom indeed has a party in these courts such serviceable, clear-headed and as it appears to me, absolutely truthful witnesses as these two boys to offer in respect of its case."

Motilal Shivilal appealed and the Appeal Court (Chief Justice Scott and Justice Russell) reversed Justice Beaman's judgment. Scott remarked in his judgment that the cross-examination of Dani with regard to the fraudulent nature of a balance sheet not connected with the matter in dispute, placed him in an uncomfortable position, and reduced him to shuffling answers but it did not affect the story of the events in dispute, and that his evidence with regard to that was straightforward and convincing. On appeal to the Privy Council, that tribunal reversed the appeal court judgment and restored the judgment of Beaman. They took strong exception to the observation of Scott that the cross-examination of Dani which convicted

him of being a party to a false and fraudulent balance sheet of Tricumdas Company was not a very relevant point. The Privy Council said:

"The observation might be of disastrous effect if accepted. Cross-examination to credit is necessarily irrelevant to any issue in the action; its relevancy consists of being addressed to the credit or discredit of the witnesses in the box so as to show that his evidence for or against the relevant issue is untrustworthy. It is most relevant in a case like the present where everything depends on the Judge's belief or disbelief in the witness' story, and to excuse him and actually accept his story on the ground that he was uncomfortable when he was shown to be a fraudulent falsificator of accounts is to adopt a course which Their Lordships cannot follow."

GOLDEN GANG CASE

A young Bhatia came into a large fortune from his adoptive father. Certain people entered into a conspiracy to relieve him of some part of his inheritance. They executed the following scheme. One of them bought a piece of land at Malabar Hill for a certain amount. He then, after the expiry of a short time, purported to sell the land to one of his associates for a considerably enhanced price. After another interval, this purchaser purported to sell the same land at an enhanced price to another associate and so on. By reason of these fictitious sales, the conveyance to the last associate purchaser showed a heavy price.

The last associate offered the land to this young heir and sold it to him for a further enhanced price. The young purchaser paid a certain amount towards the purchase price and gave a promissory note for the balance which was substantial. Then the member of this gang who was the vendor to the young man filed a short cause suit on this promissory note. I was briefed for the plaintiff. Neither I

nor the attorneys had any knowledge of the previous bogus transactions. We took it as an ordinary simple suit on a promissory note. The suit appeared on the board of Justice Chandavarkar and when it was called on, counsel appeared for the defendant and asked for an adjournment to enable the defendant to put in a written statement and to contest the suit as it was a fraudulent transaction. The judge granted the adjournment. When the written statement was filed, it related the whole story. In the result, Chandavarkar after protracted hearing in which the whole fraud was exposed, dismissed the suit and if I remember rightly granted the counter-claim of the defendant for return of the moneys already paid. In his judgment, he characterised those associates in frauds "a Golden Gang."

INDIAN SPECIE BANK

Chunilal Saraya who had qualified as a Doctor having taken the L.M. & S. degree of the Bombay University and whom I knew from my College days had ambitions in the sphere of finance. Instead of practising the medical profession, he joined the Bank of Bombay as Assistant Shroff. He proved a very efficient officer in the banking line. He however, had great attraction for speculation and he plunged into it from time to time. As the authorities of the Bank disapproved of this he retired and got a pension as he had put in 17 years' service. Later he took part in promoting the Bank of India and it was contemplated that he would be its first Manager. Through some disagreement, however, between the chief promoters and Chunilal, he did not join the Bank.

He then promoted the Indian Specie Bank which went on for some years. It was said that Chunilal's speculative instinct had led him to corner silver on behalf of the Bank. The bazar was thick with rumours about this and a petition for winding up the Bank was presented to the High Court on the ground mainly that the Bank had

largely speculated in silver involving heavy loss and that the substratum of the Bank had gone.

I appeared for the Bank to oppose the petition. During consultation I asked Chunilal to let me know what the real facts were, and he swore that the Bank did not own any silver at all. At the hearing of the petition before Justice Davar, I stated on instructions that the Bank did not own an ounce of silver. The petition was dismissed and Chunilal got a big ovation in the market. The real fact as it later transpired, was that the Bank had in fact bought large quantities of silver but in the accounts, it was shown that one Nanabhai who turned out to be a man of straw, had purchased all that silver and the Bank had financed him and the silver was pledged to the Bank and was in the Bank's possession. This was merely a camouflage but Chunilal was technically right on the face of the books when he said that the Bank did not own an ounce of silver. He had cornered this silver expecting that prices would go up and the Bank would make a huge profit. The Government of India, however, released a considerable quantity of silver for sale in the market with the result that the prices tumbled down and the Bank was a heavy loser.

A second petition for winding up was presented and the court ordered the Bank to be wound up. Within a few days Chunilal died suddenly at his residence at Bandra and it was generally believed at the time that he had committed suicide. With the crash of the Bank, the Directors came into trouble and proceedings for misfeasance were started against them. These proceedings lasted for a considerable time in the High Court.

X vs. X

Mr. X was a high officer of Government. Mrs. X filed a petition for divorce against him on the ground of adultery. The matter was heard by Justice Davar in camera in his Chamber. The evidence in support of the alle-

gation of adultery was that of a solicitor's clerk who had watched Mr. X going into a brothel and remaining inside for sometime. There was no appearance for the defence. A decree *nisi* was passed. Subsequently, under the instructions of Government, the Advocate-General intervened as the King's Proctor does in England and charged that the divorce proceedings were collusive and several affidavits in support of that allegation were filed. Some time afterwards, however, the Advocate-General withdrew his opposition.

The case appeared on board for decree absolute before Davar and I was briefed for the petitioner. As the Advocate-General's opposition had been withdrawn, I thought that the decree absolute would follow as a matter of course and that no further argument was needed. I was engaged that morning in the Appeal Court and so I asked Bhulabhai Desai to hold my brief before Davar and to obtain the decree absolute. On the matter being called on, Bhulabhai stated that there was no opposition and that the decree absolute should be passed. The judge, however, said that Government might withdraw their opposition but the affidavits on which they relied were on record and it was for him to decide whether the decree should be made absolute. On that Bhulabhai asked for an adjournment which was granted. At the adjourned hearing, I appeared and after some discussion, His Lordship granted the decree absolute. This was the only instance in which Government intervened in divorce proceedings.

ZORASTRIAN CONVERT'S CASE

In the year 1914 there was great controversy in the Parsi community over the rights of certain persons (originally belonging to other sects and religions who had become converts to the Zoroastrian religion) to the benefit of the funds and institutions held by certain trustees for the benefit of the Parsi community. The controversy arose under the following circumstances.

Mr. R. D. Tata of the Tata family married a French lady and she was converted to Zoroastrianism by appropriate rights. There was another lady, a Rajput, who had also been similarly converted. The question arose whether these converts were entitled to participate as Zoroastrians in the benefit of certain trusts and particularly the Towers of Silence and the Godavia Agyari. The trustees had notified that they would not allow the two ladies to participate in the benefits of the funds and institutions under their management. In order to get this question decided, a suit was filed by Sir Dinshaw Petit and others, among them being Mr. R. D. Tata, against Sir Jamshetji Jeejeebhoy and the other trustees of the funds and properties of the Parsi Panchayet. The object of the suit was to have it declared that the Zoroastrian religion allowed conversion and that the funds and properties in the hands of the trustees were endowed for all Zoroastrians and that, therefore, converts were entitled to the benefits of those funds and properties including the Towers of Silence and Godavia Agyari. There was also a prayer for declaration that the defendants were not validly appointed trustees.

A Special Bench consisting of Justices Davar and Beaman was constituted to hear the suit which went on for many days. The court held on the main issue that as the plaintiffs had not been denied the benefits of the trust property, and the two ladies who had been denied such benefit not having joined as plaintiffs, it was not competent to the plaintiffs to sue and that any decision given by the court would not bind those two ladies. Curiously enough, however, the court proceeded to decide the main issue in the suit and held that the benefit of the said funds and properties was confined only to Parsi Zoroastrians and not to converts.

SURAJMAL vs. HORNIMAN

The *Bombay Chronicle* in its issue of March 15, 1916 published certain articles under the heading "A Solicitor

and his Client—Matter for Investigation.” The article referred to the conduct of Surajmal Mehta a solicitor, as appearing in the course of certain litigation and reciting the allegation made against him, said that the Court and the Law Society should enquire into the matter. Surajmal thereupon filed a libel suit against Horniman, the editor of the *Bombay Chronicle*.

The suit was heard by Justice Macleod. Bahadurji and myself appeared for Horniman and Strangman for Surajmal. Macleod decided in favour of Surajmal and gave a decree for Rs. 3,000 and costs against Horniman. Horniman filed an appeal which was heard by Chief Justice Scott and Justice Heaton. I argued the appeal for Horniman, and Strangman appeared for Surajmal. The appeal lasted for several days and excited great public interest. The two judges differed in their opinion, Scott holding that what had appeared in the *Chronicle* was fair and honest comment on a matter of public importance, while Heaton held that the comments were not fair. When the differing judgments were delivered Scott said that the matter would be referred to a third judge for final decision. I objected to this and urged that under clause 16 of the Letters Patent, when the judges differed in a matter arising on the Original Side of the High Court, the opinion of the senior judge must prevail.

A day was fixed for arguing the point and Strangman and I argued the question on opposite sides. Both Scott and Heaton held in my favour with the result that Scott's opinion prevailed and Surajmal's suit was dismissed, the court in view of the difference of opinion making no order as to costs. Surajmal appealed under the Letters Patent against this decision and the appeal was heard by a full bench consisting of Justices Batchelor, Beaman and Marten. I appeared for Horniman, and Strangman for Surajmal. The appeal was argued at considerable length and the court

reserved judgment. In the end, concurring judgments were delivered upholding the view of Scott that the article in the *Chronicle* was a fair and honest comment on a matter of public importance and the suit was dismissed. Surajmal was made to pay the costs of Horniman throughout.

SHIVLAL MOTILAL LITIGATION

The Shivilal Motilal family whose original home was Nagore, a small village in Jodhpur State, migrated to Hyderabad, where it developed large business and amassed great wealth. The business was carried on in the name of Shivilal Motilal at Hyderabad and Bombay. Motilal died in June 1917 leaving behind his adopted son Bansilal and Bansilal's five sons, the eldest of them being Govindlal. The relations between Motilal and his adopted son Bansilal were very strained and it is said that Motilal had openly told Bansilal, that he, Motilal, wished and prayed that Bansilal in his turn got from his son the same sort of treatment that Bansilal had been giving to his father. Motilal left a Will whereof he appointed his grandson, Govindlal, the sole executor and trustee, and gave the bulk of the property to his grandsons. The property left by him was estimated at about Rs. 10 crores.

In July 1917, Govindlal filed a suit in the High Court of Bombay against his father Bansilal and his other brothers in which he propounded the Will of Motilal. On the same day, Bansilal filed a suit against Govindlal and his other sons for a declaration that all the properties in the hands of Motilal Shivilal at his death were ancestral joint family properties and at the death of Motilal, these properties passed by survivorship to Bansilal and his sons and grandsons. He contended that the will executed by Motilal Shivilal was null and void and inoperative, so far as the ancestral joint properties were concerned, and sued for partition of the same. He also submitted that his wife Budribai was entitled to a share on such partition.

In both suits, applications were made for the appointment of a Receiver of the property. Govindlal contended that he should be appointed Receiver and in support filed affidavits from well-known citizens of Bombay testifying to his fitness. Bansilal pressed for the appointment of the Official Receiver and Justice Marten appointed R. D. Sethna, the then Official Receiver, as Receiver of properties in British India, and by consent of parties, also of the Hyderabad property. The Receiver accordingly went to Hyderabad but he was prevented by the Hyderabad authorities from taking possession. The Nizam's Government declined to allow any order of the High Court of Bombay to be carried out within Hyderabad jurisdiction. On an application to the Bombay High Court, Justice Kajiji and in appeal Chief Justice Scott and Justice Macleod upheld the view of the Hyderabad Government. The Appeal Court suggested that the Receiver should file a suit against the parties in the Hyderabad Court and ask that he himself should be appointed Receiver by the Hyderabad Court. The Receiver accordingly filed a suit in the Hyderabad High Court to which Budribai was made a defendant along with all the parties in the Bombay suit, but the judge who heard it dismissed the case on the ground that the Bombay High Court had no jurisdiction to appoint a Receiver of Hyderabad property.

An appeal was filed in the Hyderabad High Court by the Receiver. Mr. Mulla appeared for the Receiver and I appeared for Budribai instructed by Mr. Romer of Messrs. Merwanji Cola & Co.

When I reached Hyderabad, Mulla who was appearing on the other side met me and said that the Judges had intimated that the appeal would not be heard then as the Judges were going to sit on some Commission. I and Mulla then saw the Chief Justice and he referred us to the Judicial Secretary. Ultimately, it was arranged that the Court consisting of the Chief Justice and two other

Judges would hear our appeal in the afternoon and they would sit on the Commission in the forenoon. The hearing of the appeal lasted several days. We discovered that one of the Judges did not know English and I and Mulla were arguing in English citing numerous authorities. The other Judge knew English but during the course of argument, it appeared that he was against us, while the Chief Justice appeared to be in our favour. Ultimately, the Chief Justice and the Judge who did not know English agreeing with him, decided the appeal in our favour.

As regards the question whether Bansil's wife was entitled to an equal share on partition, a Commission was issued in the Bombay suit to take evidence on custom in Jodhpur State. Ultimately the parties came to a settlement whereby it was declared that all the properties in the hands of Motilal were ancestral joint family properties and his will was void and inoperative in respect of such properties and the same were directed to be divided amongst Bansilal and his five sons in equal shares after first paying Rs. 25 lakhs to Budribai in settlement of her claim.

In this litigation I appeared throughout for Bansilal except at the last stage when I had accepted office as Member of the Executive Council in Bombay.

This litigation lasted for many years and the wish of Motilal that the sons of Bansilal should give Bansilal great annoyance and trouble was fulfilled. Strangely enough Govindlal who had fought his father Bansilal was destined to get the same treatment from his brother and son.

Later disputes arose between Govindlal and his brother Mukundlal on the one hand and between Govindlal and his son Venkatrao on the other and suits were filed in the High Court. These suits were referred to the arbitration of Taraporewala and myself and we made an award which was accepted by the parties concerned.

BHAGCHAND vs. SECRETARY OF STATE FOR INDIA

Serious riots broke out in Malegaon in the Nasik District in April 1921 which resulted in loss of life and destruction of property. The Momins of Malegaon who were alleged to be the actual rioters were a community of weavers in the city who bought yarn from the shopkeepers of the town and after manufacturing saries sold them to the shopkeepers. On July 1, 1921, the Home Department directed the employment of additional police at Malegaon. It was at first ordered that the amount of compensation to be awarded to those who suffered by the riots as well as the cost of the additional police to be quartered at Malegaon, should be recovered mainly from the Muslim population and the Municipality was asked to collect the imposition.

The Municipality declined to undertake the task on the ground that it would be impossible for them to make the collection from the turbulent Muslims. The District Magistrate recommended that as it would be difficult to make recoveries from the Muslim weavers who were very turbulent, the compensation amount and cost of the police should be recovered on behalf of the Muslims from the shopkeepers who purchased saries from the Muslim weavers. In making this recommendation, he observed "The shopkeepers were easily made to collect the Khilafat funds. Let them now be made to collect our compensation." The idea was that the shopkeepers would reimburse themselves by charging more for the yarn they sold to the weavers or in the alternative charge more for the saries they sold to the public.

This was evidently unfair. When the Municipality and Government felt themselves unable to make recovery from the turbulent weavers, it was almost impossible for the shopkeepers to charge the weavers more for the yarn. On the other hand, if they charged their customers more for the saries, when the burden which should have justly fallen on the weavers would be transferred to the comparatively inno-

cent Hindus who bought the saries. Government, however, accepted the proposals of the District Magistrate.

Some of these shopkeepers filed a suit contending that the orders of Government were illegal and prayed for a permanent injunction against the Secretary of State restraining him from recovering the tax. A temporary injunction was sought pending the disposal of the suit. The Court at Nasik rejected the application for injunction. An Appeal was filed in the High Court and a temporary injunction was granted. When the suit came on for hearing before the District Judge at Nasik, the Court held that the notification was not *ultra vires*. The plaintiffs appealed to the High Court. I with G. N. Thakore appeared for the appellants. The contention of the respondents was that the suit was bad as the two months' notice required under Section 80 of the C.P.C. had not been given. The Court held that it was not precluded by reason of section 80 of the C. P. Code from entertaining a suit for injunction against the Secretary of State before the expiration of two months. They considered that if the cause of action required an immediate remedy by way of injunction, the party aggrieved would have no remedy if section 80 were literally applied. The Appeal Court held that inasmuch as the law allowed Government to make the recovery from any persons or class of persons the orders of Government were not *ultra vires* although they may be unfair or oppressive.

The plaintiffs appealed to the Privy Council which held that Government in its administrative discretion could change the incidence of the tax and could impose it on any class of persons without proof of the active complicity of that class in the rioting. They further held that compliance with Section 80 of the Code of Civil Procedure was necessary for a suit either for a declaration or for injunction. This overruled the series of decisions of the Bombay High Court to the effect that regard-

ing suits to restrain by injunction the commission of some official act prejudicial to the plaintiffs (if the immediate result of the act would be to inflict irremediable harm), Section 80 did not compel the plaintiff to wait for two months before bringing the suit. The High Courts of Calcutta, Madras and Allahabad had taken the view held by the Privy Council to be the correct one. The decision of the Privy Council on the point has created a situation of great hardship to the public who are debarred from obtaining the remedy of preventing Government from doing an act which would inflict irremediable harm. This question requires the attention of the legislatures.

WRIT OF HABEAS CORPUS. S. 491 CRIMINAL PROCEDURE CODE

In the year 1925, a Borah father entrusted the custody of three of his minor daughters to the Mullaji Saheb of the Dawoodi Borah community. The girls were taken charge of by Mahomedally Allabux, a trusted follower of the Mullaji Saheb, and two of them were thereafter sent by him to a place in Junagadh State in Kathiawar. The father subsequently made attempts to get back the custody of his daughters and having failed he applied to the High Court for a writ of habeas corpus under Section 491 of the Criminal Procedure Code.

I appeared for the father both before Justice Shah and before the Appeal Court. A rule *nisi* was issued by Justice Shah for the production of the minors. One of the minors was produced before the court and she was ordered to be entrusted to the custody of the father. With regard to the other two, it was urged that they were outside the limits of the appellate jurisdiction of the High Court. The Judge allowed the petition to be amended to the effect that it was a petition not only under Section 491 of the Criminal Procedure Code but also for the exercise of the common law powers of the High Court to issue a writ of

habeas corpus. The rule was discharged against the Mulla-ji Saheb and made absolute against Mahomedally who was ordered to produce in court the two minors who were at Junagadh on a particular day.

Mahomedally appealed against this order. It was contended that the legislature by enacting section 491 of the Civil Procedure Code limited the common law powers which the High Court had with regard to the issue of writs of *habeas corpus*, and as the minors were not only outside the limits of the appellate jurisdiction of the High Court but also outside British India, it was not competent for the High Court to issue such writs. The Appeal Court, however, held that the common law powers of the High Court had not been affected by section 491 and that as Mahomedally had still the custody of and control over the minors, though they were out of British India, the Court could order him to produce them.

In a recent case, however, the Privy Council have held that since the enactment of section 491, the common law powers of the High Court in the matter of writs of *habeas corpus* have been circumscribed by the provisions of that Section (99 I.A. 222 (236)).

JEHANGIR PETIT vs. THE MUNICIPAL CORPORATION

On April 1, 1927 a meeting of the Bombay Municipal Corporation was held to elect the President for the year beginning on that date. There were four candidates duly nominated viz: J. B. Petit, S. S. Batliwala, Jehangir Boman-Behram and L. R. Tairsee. The retiring President, R. M. Chinoy, was elected Chairman for the meeting. Tairsee withdrew from the contest. In the first ballot, Petit got 36 votes, Batliwala 31 and Boman-Behram 30 votes. Boman-Behram was thus eliminated and in the second ballot, Petit and Batliwala got 49 votes each. So under the rules, the Chairman had to give his casting vote. According to Mr. Chinoy as he felt that both candidates were eminent mem-

bers of the Corporation and had rendered valuable services he found it difficult to make any distinction between them. Accordingly he decided to draw lots and he asked Mrs. Mackenzie, a member of the Corporation, to draw lots and when the lots were drawn and the name of Batliwala came up, he declared him elected.

Petit filed a suit to have the election declared invalid. I appeared for Petit. It was contended by us that the Chairman had not given a valid casting vote because the giving of a casting vote involved the exercise of judgment and that a casting vote given according to the result of the drawing of lots was an election by chance and not by vote and was, therefore, invalid. It was pointed out that in the Municipal Act as well as in certain other enactments, where the legislature wanted the final decision to be by the drawing of lots, it expressly said so while in the section of the Bombay Municipal Act governing this matter, the question had to be decided by the casting vote of the chairman which is different from drawing lots.

In my cross-examination of Chinoy I put him a question and he said 'I do not understand the question. I am not an English scholar.' I said 'I did not suggest you were, but my question is so simple that a school boy can understand it.'

Mr. Justice Blackwell, in his judgment said that the giving of a vote did not necessarily involve the exercise of judgment at all, that it involved merely the expression or intimation of a wish or choice and that such wish or choice might be actuated by mere whim or caprice. He further said that even if the giving of the casting vote did involve the exercise of judgment the Chairman having considered the respective merits of the two candidates and finding himself unable to make a choice between them, he was entitled to assist himself in choosing between them by drawing lots. In the result, the suit was dismissed.

SOME CASES

It is difficult to understand or approve the reasoning of the learned Judge when he says (1) that the giving of a casting vote does not involve the exercise of judgment and (2) that the Chairman exercised his judgment by assisting himself by drawing lots.

LANGLEY vs. D'ARCY

Langley was a cotton merchant doing business on a large scale in Bombay. He was very fond of horse racing and kept many race horses. He was a Steward of the Bombay Turf Club. D'Arcy, an Australian, was his trainer. D'Arcy left Langley's service and in a letter written by him to the Stewards of the Turf Club stated that Langley had given him instructions such as prevented him from winning with a majority of his horses at the Poona Races. The Stewards, however, did not attach any importance to D'Arcy's allegations and Langley was re-elected Steward of the Turf Club. D'Arcy then went away to Australia.

Langley asserted that the allegations made by D'Arcy were false and malicious and he filed a suit for damages against D'Arcy for defamation and I was briefed for Langley by Crawford Bailey & Co. In my opinion it was not worth while to file such a suit as nobody had taken the allegation seriously and the man had left the country. D'Arcy in his written statement relied upon certain instructions given orally as well as in writing through correspondence that passed between him and Langley while the latter was in England whereby D'Arcy said he was asked to win with some horses only and not with others in Poona. The suit was heard by Justice Norman Kemp in 1929 and the hearing lasted for about 10 days. I appeared for Langley and Mr. Binning for D'Arcy. In the end, Mr. Justice Kemp awarded to Langley one rupee damages and made no order as to costs.

After that Langley wanted to appeal. I strongly advised him to let the matter rest where it was, for I thought

he might go further and fare worse and so it happened. The appeal was heard by Justice Blackwell and Justice Crump. Mr. Bhulabhai Desai appeared for Langley. The defendant had filed cross-objections. The Court held that the defendant had justified his allegations and set aside the award of one rupee and made Langley bear the costs in both Courts.

A MISER'S WEALTH.

Ranchhoddas Tribhuvandas Mody, a Kapole Bania had amassed considerable wealth (Rs. 60 lakhs) by lending moneys at high rates of interest. With all the wealth that he had, he lived in a miserly manner, never entertained friends and never gave anything to deserving charitable objects. A striking instance of his great unwillingness to spend money is illustrated by a story which Mr. S. G. Velinkar vouches for. Mr. Velinkar wanted Ranchhoddas Mody to become a Life Member of the Hindu Gymkhana, the fee for life-membership being a lump payment of Rs. 500. After repeated requests, Mr. Ranchhoddas agreed and asked Mr. Velinkar to come to his house on a Sunday to receive the amount. When Velinkar went there, Mr. Ranchhoddas brought out his cheque book and said "As I promised you, I will give you my cheque for Rs. 500 but I may tell you that when I have given it, I will pass sleepless nights for a fortnight." Velinkar thereupon got up and left saying "I don't want your money."

Ranchhoddas had no children and on his death, he left behind him his widow Putlibai. Most of his investments were in the joint names of himself and his wife Putlibai. He left a Will in favour of his wife. Jugmohandas Kallianadas and his brothers who were his nephews filed a suit for the administration of his estate and a Receiver was appointed. Ultimately a consent decree was taken whereby Putlibai was declared entitled to all the estates left by her husband as well as assets standing in the Joint names of

Ranchhoddas and Putlibai subject to six lakhs of rupees to be paid to the Accountant-General to the credit of charity; certain properties worth about 5 lakhs to be given to Bhagvandas, one of the plaintiffs in the suit who had adopted the name of Ranchhoddas as that of his father though there was no formal adoption; five lakhs of rupees to be paid to Mr. Amritlal Dholkia, the son of Putlibai's brother and some lakhs to be paid to the plaintiffs.

The Court appointed myself, Dewan Bahadur Krishnalal Jhaveri and two other trustees for the amount of Rs. 6 lakhs set apart for charity with liberty to the trustees to dispose of the corpus in such manner as they may deem proper with the sanction of the Advocate-General. Probate of the Will was issued to the executors. Putlibai died in April 1932 before she could realise the estate. She left a will of August 1931 appointing Mr. P. Laud, a solicitor, Amritlal Dholakia and his son Babubhai and one C. M. Desai as executors and nothing was given to Ranchhoddas' nephews, but 10 lakhs of rupees were given to Mr. Babubhai, the son of Mr. Dholakia. The executors filed their petition for probate and Jugmohandas Kalliandas and his brothers filed a Caveat and the Court Receiver was appointed administrator *pendente lite*. The Caveators alleged that Putlibai, when she made the will, was not in a sound and disposing state of mind.

I appeared for the executors in support of the will. The evidence of some witnesses for the executors lasted for about 17 days before Justice B. J. Wadia. The executors' evidence would have occupied some days more and then the Caveators' evidence would have taken considerable time. By the time the evidence of Mr. Laud, one of the executors and the solicitor for the executors was nearing an end, I and other Counsel appearing for the executors considered that it was desirable for the executors to come to a settlement. Under the settlement arrived at, various sums were set apart for educational purposes among which

Rs. 2,80,000 were earmarked to be given to the University of Bombay for its Technological Department, and certain other moneys were ordered to be paid to the Sarvajanik Education Society of Surat for establishing a Science Department in their college. A sum of Rs. 12 lakhs was agreed to be paid to the Caveators and the residue of the estate (after making all the payments and costs of all parties) was to be handed over under the terms of the Will to Babubhai by the executors to whom Probate was issued.

Heavy costs were incurred in this testamentary suit and Messrs. Ardeshir Hormusji Dinshaw & Co., the Solicitors of the Caveators were paid for their costs Rs. 2,50,000. The costs of the executors were also heavy. In the result, all the wealth that Ranchhoddas had accumulated and which he never enjoyed himself got distributed among various charities and people mentioned above and the legal profession. The Hindustani adage, “सुमदा यदसि सपि यदे” (the wealth of a miser goes to those who make liberal use of it) came true.

SARDAR BIWALKAR vs. SECRETARY OF STATE FOR INDIA

This was a very interesting and important case against Government which I conducted before the District Judge of Thana and the High Court where we failed but we ultimately succeeded in the Privy Council which decreed the plaintiff's claim. The rulers of the State of Kolaba were the Angrias. In 1884 the State lapsed to the British Government as there was no heir to the last ruler. The Biwalkars were hereditary Dewans of the Angrias. Vinayek Parshuram Biwalker rendered valuable services to the Angrias as well as to the British Government. Several *inams* were conferred upon him by the Ruler. In a treaty entered into between the British Government and the Angrias, the British Government insisted upon the incorporation of a guarantee by the Angrias for the continuance of the *inams* and *sanads* in respect thereof were issued to

Vinayak Parshuram. These grants were further confirmed by the endorsement of Mr. Elphinstone and Lord Clare in 1835.

After the lapse of the Kolaba State to the British Government, one Mr. Davis was appointed to inquire into and report on the state of things in Kolaba. In his Report, he made several allegations against the administration of Vinayek Parshuram and said that excepting the *inam* income which was Rs. 10,000 at the date of the grant all other *inams* were unjustifiable. The British Government confirmed Mr. Davis' report and informed the Diwanji that only the *inam*, the annual income of which was Rs. 10,000, would be continued. After the death of Vinayek Parshuram, his son Dhundiraj Vinayek continued correspondence, with the British Government about the *inams*. After his death, his widow Umabai took in adoption one Vinayek. In 1885 Government informed Umabai that as the adoption had been made without the permission of Government, the *inam* would be continued to her only during her life-time and after her death, only half of the *inam* would be continued to her adopted son and the remaining half would lapse to Government.

Umabai died in 1917 and after her death, Government informed the adopted son Vinayek that in pursuance of their resolution of 1885, Government had decided to resume half of the *inam* and all the *inam* villages were put under attachment. Subsequently Sardar Vinayek submitted petition to Government claiming that he was entitled to the entirety of the *inam* villages, the forest and other rights, whatever the present income from them might be. In 1920, the Government of India decided that the claim of Vinayek as the adopted son should be fully admitted. This decision of the Government of India was communicated to Sardar Biwalkar by the Government of Bombay.

When, however, the Sardar asked for the restoration of the *inam* villages, he was informed in 1922 by the Govern-

ment of Bombay that they had considered the documents which were the foundation of the *inam* and they had come to the conclusion that all that the Sardar was entitled to was a cash allowance of Rs. 10,002. He was further told that the Government would allow him to take possession of the *inam* villages and other properties on condition that he should account for the income, retaining to himself only Rs. 10,002 and refund the balance to Government. These orders of the Government of Bombay amounted to a non-compliance with the orders of the Government of India.

The Sardar accordingly filed a suit against the Government of Bombay regarding the *inam* land. The suit was heard by Mr. Shannon, the District Judge of Thana, who dismissed the plaintiff's suit. On appeal to the High Court, which I argued on behalf of the Sardar, Chief Justice Beaumont and Justice Rangnekar dismissed the appeal. The Sardar appealed to the Privy Council. The tribunal reversed the decision of the Bombay High Court and decreed the plaintiff's claim. They held that the Sardar was entitled to the soil of the *inam* villages including the forests and all the income therefrom. They commented on the action of Government of Bombay in acting contrary to the guarantee for the protection of the *inam* that they had extracted from the Angrias, as well as to the orders of the Government of India and the opinion of their Advocate-General which was against their decision.

VITHALBHAI PATEL'S WILL

Mr. Vithalbhair Patel, a prominent Congress leader and the first elected Indian President of the Central Legislative Assembly died in Switzerland in October 1933. He left a will dated October 2, 1933 which was admitted to Probate by the High Court in September 1934. By his Will after providing for certain pecuniary and other bequests he disposed of the residue in the following terms:—

“The balance of my assets is to be handed over to Mr. Subash Chandra Bose to be spent by him or his

nominee or nominees according to his instructions for the political uplift of India and preferably for publicity work on behalf of India's cause in other countries."

Those who would, but for this clause, have inherited this amount as on any intestacy contended that the clause was invalid and inoperative. The executors thereupon took out an originating summons to determine the validity and proper construction of the clause. I appeared for the parties contending that the clause was bad as the Trust was not a valid charitable trust according to law. It was contended on behalf of Mr. Bose that there was an absolute gift to Subash Bose and in the alternative that it was a valid charitable trust. The amount covered by the clause totalled Rs. 1,17,796.

The whole controversy centred round whether the object "political uplift" was such a clearly defined object that if necessity arose, the Court could supervise and control its application. Mr. Justice Wadia as well as the Appeal Court (Chief Justice Beaumont and Justice Kania) held that the words "political uplift" may be understood to be different things by different people and it is not of a specific kind as to be capable of being definitely enumerated and that it was not possible for the Court when called upon to determine whether there was a breach of trust, to decide the question. It was held that there was intestacy in respect of the property covered by the clause and it would go to the heirs of Vithalbhai Patel as on an intestacy.

SHRI NATHJI LITIGATION

The Vallabhacharya cult of the Vaishanava religion was founded by Vallabhacharya, a great religious philosopher and saint some centuries ago. This cult now embraces many millions of people in India including wealthy merchants in Bombay and other parts of India. Vallabhacharya and his descendants were residing at Giriraj and had two

idols, one of Shrinathji and another of Navnitpriyaji, and the followers of this sect from all parts of India used to go to worship those idols.

In 1688 A.D., the then successor of Vallabhacharya migrated to Nathdwara in the Udaipur State where these two idols were installed. He was styled Tikayat Maharaj. The succession to the office Tikayat Maharaj came to be regulated by the rule of primogeniture. The Tikayat Maharajas were also themselves held in great veneration by the devotees of the idols. Numerous valuable gifts of immovable and movable properties as well as cash used to be made by devotees from all over the country. Some of these gifts were made in the name of the idols while others were made in the name of Tikayat Maharaj who was for that purpose identified with the idols and there were still further gifts that were made personally to the Tikayat Maharaj.

Govardhanlalji Maharaj was the Tikayat Maharaj till his death in September 1933. His eldest son, their heir apparent Damodarlalji who had already married a wife in March-April 1933, married again a Muslim girl called Hansa who it is said had embraced Hinduism. This created a great commotion among the devotees. On the death of Govardhanlalji Maharaj in September 1933, the Government of Udaipur in whose territory Nathdwara is situated passed certain orders whereby Damodarlalji was disqualified from being Tikayat Maharaj and by an Order dated October 10, 1933, his minor son Govindlalji was declared to be the Tikayat Maharaj and a Committee of Management of the Temple and its properties was appointed by the State. This Committee appointed certain devotees in Bombay as their agents in Bombay for the purpose of administering and looking after the properties in Bombay belonging to the Temple.

Damodarlalji, thereupon, in January 1934 filed a suit No. 23 of 1934 in the High Court of Bombay against the Committee of Management and his son Govindlalji, con-

tending that he was the Tikayat Maharaj of the Shrinathji temple, that the orders of the Udaipur Durbar were invalid and in any event, were not operative as regards properties in British India and that as Tikayat Maharaj, he was the owner of the idols of Shrinathji and Navnitpriyaji and that all properties, movable and immovable, purporting to be donated to the idols and all gifts and offerings to them belonged to him as his own property. On behalf of Govindlalji, his minor son, who was impleaded as a defendant, it was contended that the orders of the Udaipur Durbar were valid and that he was the Tikayat Maharaj. On behalf of the Committee of Management, it was contended that Govindlalji was the real Tikayat Maharaj under the orders of the Udaipur Durbar and that all properties, movable and immovable, offered to the idols belonged to the idols and not to the Tikayat Maharaj. The two idols were then added as party defendants and Ranchhoddas Patwari of Rajkot was appointed their *guardian-ad-litem*. On behalf of the idols the same contentions were taken as those raised by the Committee of Management and a counterclaim in accordance therewith was put in.

An application was made for the appointment of a Receiver. I appeared for the Committee. The Court appointed two leading Bhatia merchants as Receivers. In July 1935 Damodarlalji passed a document to the Udaipur State submitting to their orders and abandoning his claim to be Tikayat Maharaj. He therefore applied to the High Court for withdrawal and dismissal of the suit. His application was granted by the Court and his suit was dismissed but it was ordered that the counterclaim of the idols should be proceeded with and should be tried and disposed of on merits. Thereafter, Damodarlalji died and his son Govindlalji was brought on the record in his place as the defendant to the counterclaim. As the decision on the counterclaim of the idol was felt to be very important by the devotees of the shrine and as it was apprehended that the

final decision by the Privy Council in the matter would involve the delay of many years, all the parties in November 1941 applied to the High Court that the whole dispute should be referred for final determination to my sole arbitration and the High Court made the order on November 13, 1941.

The proceedings before me began on December 10, 1941 and I made my award on the April 19, 1942. The award declared that the idols were the owners of all properties, movable and immovable, donated from time to time either in the name of the idol or of the Tikayat Maharaj except in cases where the terms of the gift showed that it was made personally to the Tikayat Maharaj. The Udaipur Durbar as well as all the parties accepted the award and have acted upon it.

PROHIBITION CASES

In 1938 the Government of Bombay in order to give effect to their prohibition policy issued a notification under Section 14 (2) of the Abkari Act prohibiting the possession by any person without a pass, permit or licence of any quantity of any intoxicant other than those specified in the schedule annexed to the said notification in the City of Bombay and its Suburbs. Similar notification was also issued with regard to the city of Ahmedabad and other places. The Abkari Act was, as its preamble shows, enacted to regulate the import, export, transport, manufacture, sale and possession of liquor and also to regulate the Abkari revenue derivable from any duty, fee, tax, etc. that may be levied on the manufacture of liquor and intoxicating drugs. The notification instead of being subservient to the main purposes of the Act was in opposition to the main provisions of the Act. The Government of Bombay if they wanted to enforce prohibition should have passed a separate enactment for that purpose and should not have tried to effect their object by a notification under the Abkari Act which went contrary to the whole purpose and scheme of

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the Act. The Madras Ministry under the wiser guidance of Mr. C. Rajagopalachari did not attempt a short cut like that attempted by the Bombay Ministry but passed a separate Act for Prohibition and introduced it only in limited areas and did not apply it to the presidency town.

On April 1, 1939, the house of Sheth Chinubhai Lalbhai at Ahmedabad was raided and a certain quantity of prohibited liquor was found. He was charged before a Magistrate for contravention of Section 14B of the Abkari Act read with the said Notification. The case was transferred by the High Court to the Court of the Sessions Judge, Ahmedabad, for trial. I appeared for the accused. The Sessions Judge convicted him and imposed a fine of Rs. 100. Several persons were similarly prosecuted in the City of Bombay but the Presidency Magistrate who tried these cases held the notification to be *ultra vires* and acquitted the accused.

Chinubhai Lalbhai of the Ahmedabad case filed an appeal in the High Court while Government filed appeals against the acquittal of the several accused in Bombay. All these appeals were heard by a full bench consisting of Chief Justice Beaumont and Justices N. J. Wadia, Macklin, Wassoodev and Sen. I appeared for Chinubhai Lalbhai, and for the various Bombay accused, Coltman, Jamshedji Kanga, Kolah and Velinkar appeared. M. C. Setalvad, the Advocate-General, appeared for Government. In addition to the objection that the notification went beyond the scope and object of the Abkari Act, it was urged that the power given by Section 14B to prohibit the possession of liquor by "any person or class of persons" did not permit Government prohibiting possession by the public generally.

The Court held that the effect of the notification was to nullify the whole object of the Act which pre-supposed the existence of the liquor trade and the collection of revenue therefrom. The Court further held that the natural meaning of the expression "any person or class of persons"

was, a person designated by name or description, or a class of persons designated. The contention put forward on behalf of Government that the words "any person" were equivalent to the word "every person" was negatived. The Court accordingly acquitted Chinubhai Lalbhai and dismissed the appeals of Government against the acquittal of the other accused. Before these cases were heard, the Congress ministry had gone out of office, having resigned in the month of November 1939.

On the very day on which judgment was delivered by the full bench, the Governor of Bombay who had taken over the administration of the province under Section 93 of the Government of India Act, promulgated the Bombay Abkari Amendment Act of 1940 whereby the preamble of the Abkari Act of 1878 was amended by inserting therein the words "and whereas in order to promote, enforce and carry into effect the policy of prohibition etc." In Section 14B for the words "any persons or class of persons," the words "any individual or a class or a body of individuals or the public generally" were substituted. These amendments made the Abkari Act a jumble of contraries. In a letter published in the *Times of India* of April 16, 1940, I pointed out that the Amendment Act made "strange bed-fellows of the bulk of the provisions of the Act and the amendments." Section 7 of the Act provided that the amendments shall have effect from the date on which the original Act of 1878 was enacted and that any rule, order or notification made or issued under the said Act before the commencement of the amending Act shall be deemed to have been made or issued under the original Act as amended by this Act, and that no prosecution, suit or other proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of any such rule, order or notification as the case may be. By this provision, it was attempted to validate the notification that had been declared invalid by the High Court and to proceed against persons

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who had contravened the said notification before the passing of the amending Act. On the question coming before the High Court in some prosecution, the High Court held that a notification that had been held invalid by the Court, could not be validated by the retrospective provision. Government, therefore, had to issue a fresh notification under the Abkari Act as amended.

In the Press Note issued in promulgating the amending Act, it was explained that while this measure was taken to prevent administrative chaos, the Governor remained free to make such alterations or modifications in the policy of prohibition as may from time to time appear necessary. The ban on what is officially called foreign liquor which includes whisky, brandy, etc. manufactured in India has been lifted but prohibition has been continued as regards what is officially known as country liquor, viz., toddy, etc.

In order to compensate for the loss of Abkari revenue following the policy of Prohibition, the Congress Government imposed the Urban Immovable Property Tax at 10 per cent of the rateable value of immovable properties in the City and suburbs of Bombay and Ahmedabad. This was on the face of it an inequitable imposition restricted to a particular class of investments. If prohibition was considered necessary as a measure of social reform, then all classes of people should have been made to contribute to the cost. By the Congress Government's measure, a person holding several lakhs worth of Government Paper or shares in joint stock companies does not contribute anything while a house-owner owning a property of much smaller value is made to pay 10% of the rateable value of his property.

Owing to the serious falling off in the imports of foreign liquor, whiskies, brandies and other intoxicants began to be manufactured in India from which Government is deriving by way of taxation additional revenue which materially offsets the loss of Abkari revenue occasioned by

prohibition. There is therefore no justifiable reason for continuing the Urban Immovable Property Tax.

The unjust refusal by the Congress Ministry to exempt Muslim Charitable Trust properties from the taxation will be referred to in another place.

THE OFFICIAL ASSIGNEE, BOMBAY

vs.

MIRZA MAHOMED SHIRAZI AND OTHERS

This suit in which I with Rustom Wadia appeared for the Shirazi defendants, had an extraordinary story behind it and was an illustration of how under certain circumstances the process of the Court might be abused to the serious detriment of innocent people. The suit was filed by the Official Assignee as the assignee of the estate of one Aga Mahomed Hakimkhan Shirazi who was adjudicated insolvent in 1850. The basis of the suit was that about the time of his insolvency, the insolvent had deposited jewellery and valuables worth about six lakhs of rupees with one Zanal, the grandfather of the defendants, in fraud of the creditors of the insolvent. The suit was filed against the grandchildren of Zanal to recover out of the estate of Zanal the value of the fraudulent deposit alleged to have been made over 50 years earlier with interest.

The suit was heard for over two months, a very large number of witnesses were examined, including experts in handwriting as to the genuineness of a promissory note alleged to have been passed by Zanal to the insolvent in 1850 and the genuineness of certain acknowledgements alleged to have been given by Abdul Husein, the son of Zanal to the son of the insolvent. After a protracted hearing, Justice Beaman who heard the case, delivered a long judgment on November 11, 1907 covering about 78 pages of close type.

It appears that the insolvent remained in jail from 1847 to 1850 at the instance of his creditors. Every effort was made by his creditors to trace his property and about

four lakhs of rupees were collected. In 1850 the insolvent left for Persia and died there in 1856. Before leaving Bombay he had given a Power of Attorney to Zanal. There was continuous litigation in connection with the insolvency and the insolvent's estate, in which Zanal, the creditors, and the Official Assignee were involved. At the instance of Zanal the Official Assignee filed a suit against the Shustaries who were the principal creditors of the insolvent. The suit was compromised in 1875 and the Official Assignee took Rs. 75,000 for the benefit of the estate and allowed Zanal to keep the balance of the compromise amount.

In 1878 there were quarrels between Mahomed Nabi, the son of the insolvent and Abdul Hussein, the son of Zanal, and as a result of this quarrel the son of the insolvent gave to Nabikhan, a creditor of the insolvent, documents including the promissory note of 1850 and some sanads passed at different times for various amounts to Mahomed Nabi, the son of the insolvent. In 1878 Mahomed Nabi, the son of the insolvent, himself filed a suit against Abdul Hussein claiming certain moneys of the insolvent which Abdul Hussein was alleged to have retained as the result of the litigation with the Shustaries. Although at this time Mahomed Nabi was supposed to have the documents on which the present suit was based, he made no reference to them or to the alleged deposit in 1850. In 1881 the then Official Assignee himself filed a suit against Abdul Hussein to recover a sum of about one and a half lakhs of rupees.

Abdul Hussein died in 1900 and in 1902 Mahomedali, the grandson of the insolvent, filed a suit against the family of Zanal in respect of the alleged deposit in 1850 based on certain documents alleged to have been discovered about 1900. After a long hearing that suit was compromised. It was one of the defences in that suit that if anybody had a claim in respect of the alleged deposit, it would be the Official Assignee and not the grandson of the insolvent. When the

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suit of 1902 was settled, the plaintiff in that suit himself stipulated through his Counsel Basil Scott, in the terms of the compromise recorded by his counsel in his own handwriting, that Mr. Owen of the firm of Messrs. Cragie, Lynch & Owen, Attorneys for the defendants, should personally destroy the original documents on which the suit was filed. The documents were accordingly burnt by Mr. Owen, but everybody forgot that a number of photographs and enlargements of the documents had been put in evidence by the experts in handwriting examined in the suit.

The suit of 1905 was based by the Official Assignee on these photographs left on the records of the Court. The principal defences were that the suit was barred by limitation and the documents were forgeries. On the question of limitation, the learned Judge held that the Official Assignee in 1905 had as little or as much knowledge as his predecessor had in 1881 in the suit which he then filed and the bare fact that some documents were discovered in proof of the alleged deposit would not save limitation under Section 18 of the Limitation Act. This was sufficient to dispose of the suit but the learned Judge thought fit to deal with all the other matters in the case. He further held against the genuineness of the documents on the photographs of which the suit had been based.

During the course of the trial a curious incident took place. A witness Hafiz, Librarian of the Royal Library at Rampur, who was supposed to be an expert in Persian calligraphy was being examined by the plaintiff. Whilst he was under examination one Amantullakhan made an affidavit that the defendants had paid him (Amantulla) Rs. 2,000/- to bribe the witness Hafiz. On that affidavit and without any notice to the defendants and behind their back, the learned Judge gave sanction to prosecute the defendants. The Judge evidently had his misgivings at the time, because when signing the order he made an elaborate note that he hoped that the learned Counsel who applied for

the order would take care that no misuse was made of it for the purpose of the suit. As a result of this sanction, the plaintiff obtained a search warrant and the office of the defendants was raided and various books were seized. The presence of the police at the office in the evening was the first intimation of what had happened. The next day the defendants complained of any such order being made during the course of the hearing without any notice to them and the learned Judge stated that in making the order he did not express any opinion as to the truth of the allegations or otherwise, and he made the Order only to remove the bar created by the Criminal Procedure Code.

The defendants promptly filed an appeal against the sanction. During the course of the further hearing of the suit, the man Amantullakhan on whose affidavit the sanction was given was called as a witness by the plaintiff to prove the offer of bribe. The incident could have no direct bearing on the suit and he was evidently called to create prejudice against the defendants. The result was the reverse and the witness created such a bad impression on the learned Judge that he recorded that Amantullakhan was not many minutes in the box before he (the Judge) began to entertain the gravest doubt whether it was safe to believe him. When the appeal against the sanction came up, this record of the learned Judge's estimation of the worth of Amantullakhan was read, and the Appeal Court set aside the sanction.

In doing so, Sir Lawrence Jenkins, made some pertinent observations. He said everybody knew that such orders were often obtained to put pressure on the opponent to compromise and that if the Court thought there was room for investigation, the Court should not put such a weapon in the hands of the opponent but should direct that the papers be sent to the Public Prosecutor. The Judge, as already stated, held the suit barred by limitation. As regards the documents on which the suit was based he considered the evidence of the experts entirely worthless.

He passed strong remarks about the way in which successive Official Assignees had dealt with the matter. He observed that in 1875, after the suit against the Shushtaries had resulted in recovery of a large amount, the Official Assignee accepted Rs. 75,000 on behalf of the creditors and allowed Zanal who had taken upon himself all the risk and trouble of the litigation as relator to retain the rest. Later, another Official Assignee filed a suit to recover from Zanal the amount which his predecessor had agreed to be retained by Zanal. That attempt failed. More than 20 years later, when all hope of getting any vestige of truth as to what had happened in the past had left every reasonable mind, a third Official Assignee allowed himself to be put forward and lent himself to drag the family into litigation on the strength of extremely questionable documents found in most suspicious circumstances. The Judge observed that the progress of the suit would be construed as an unfavourable example of the extent to which the machinery of the Courts could be used to satisfy the personal grudge of parties unconnected with the estate, and remarked that in these insolvency proceedings there ought to be an end at some time. He also observed that it appeared shocking after the lapse of all these years and after protracted litigation between 1847 and 1887, that it should be possible to reopen the whole matter and prosecute a claim of this sort against parties who admittedly could have no hand in the alleged fraud, upon the strength of such papers as the grandson of the insolvent was alleged to have found in the box in 1900.

The learned Judge further made strong observations regarding the relations between the Bench and the Bar and the fundamentals of professional etiquette. He affirmed that it was the right and duty of the Bench to look to the Bar for loyal assistance and there was a corresponding duty on the Bar, particularly its leaders, to refrain from derogating in the least from the respect due to the Bench whatever their personal grievances may be and that once a Judge

had ruled a point, that ruling ought to be treated not only as final but as right, so long as the case remained with the Judge. He stated that Counsel were free to criticise it in the proper place such as the Court of Appeal but they were not entitled to express any such opinion in the Judge's own Court and in his presence. These remarks were provoked by the way in which Raikes from time to time expressed his view that some rulings given by the Court were not correct.

LEGISLATIVE ANACHRONISM

Section 106 of the Government of India Act 1919 and Section 226 of the Act of 1935 provide as follows: (1) "Until otherwise provided by Act of the appropriate legislature, no High Court shall have any original jurisdiction, in any matter concerning revenue or any act ordered or done in the collection thereof according to the usage and practice of the country of the law for the time being in force."

(2) "A Bill or Amendment for making such provisions as aforesaid shall not be introduced into or moved in a chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion or as the case may be, of the Governor in his discretion." No such legislation as contemplated by clause 2 of the Section has been passed.

In *Dwarakachand Cement Company vs. the Secretary of State for India*, Mr. Justice Rangnekar commented on the incongruity of re-enacting in Section 226, a provision which might have been necessary in the time of Warren Hastings but is quite inappropriate to present conditions, because the result is that while the jurisdiction of the High Court is barred in matters concerning revenue or concerning any act ordered or done in the collection of revenue, the Courts in the mofussil are free to exercise such jurisdiction and the High Court can deal with these questions in appeal. Mr. Justice Rangnekar said: "Section 106 was first enacted in

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the year 1781 by Geo III, C. 7, S. 8 and it is well-known that the necessity for the enactment of the section lay in the historical conflict between Warren Hastings and the then Supreme Courts. Why this section continued to be retained in the subsequent Government of India Acts, including the Act of 1919 (9 and 10 Geo. V. C. 101) which, it is common ground, applies to this case, and even finds a place in the present Government of India Act of 1935 (25 Geo V. C. 2) is difficult to appreciate. The conflict had ceased long ago and as has been said, there is not the slightest justification for retaining this antiquated fossil on the Statute Book."

The Federal Court on appeal from the High Court at Calcutta in the appeal of the Governor-General in Council vs. the Reliegh Investment Co. had also to deal with this point. The Calcutta High Court had got out of the prohibition contained in the section by saying that where the law imposing the revenue is itself illegal, a dispute in relation to it cannot be said to concern the "revenue." In dealing with this point, the Chief Justice of the Federal Court said :

"It is true that this section corresponds to a provision enacted more than 150 years ago, in very different circumstances, and it is anomalous to deny to the High Court in its original jurisdiction power to try questions which a Subordinate Court and the High Court itself in its appellate jurisdiction are not precluded from trying. When framing the Constitution Act of 1935 it was open to Parliament to omit or change this provision. But it has not done so. The opening words of Section 226 indicate that the attention of Parliament was directed to the question of the expediency of retaining the prohibition in the old form, but Parliament preferred to leave it to the authorities in India to decide the time when and the form in which the provision should be recast. So long as the provision is there, it is

the duty of the Court to give due effect to the natural meaning of the words employed."

It is a great pity that no member of the Central or any local legislature has taken steps to remove this anachronism which unjustly bars the rights of subjects in the presidency towns and denies to them the remedy which subjects in the mofussil enjoy.

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CROSS-EXAMINATION BANNED

IN my appellate side days, I used to go to the mofussil to conduct cases. I was once taken to Deesa, a small town in the Mahikantha Agency, to appear for a money-lender plaintiff who was claiming Rs. 9,000 from a Subedar-Major attached to the Indian Troops stationed there. The Judge, an European, was a Major in the Army. After we were in Court for some time, the Judge arrived followed by a big dog who remained on the dais near the Judge. I called the plaintiff's evidence and proved by his books and other evidence his claim. Then the defendant Subedar-Major went into the witness box. He deposed that the whole sum alleged by the plaintiff to have been advanced was not advanced and that he, the defendant, had from time to time paid various sums to the plaintiff which the plaintiff had not credited in his books, with the result that nothing was due from him to the plaintiff.

I rose to cross-examine the defendant. The Judge turned to me and sharply said. "I can't allow you to cross-examine the defendant. I cannot allow the word of the Subedar-Major to be questioned in this Court." I pleaded in vain that I was entitled to cross-examine the witness and the plaintiff's suit was dismissed. The appeal from that Court lay to the Political Agent at Palanpur. We filed an appeal and also along with it an application that the defendant should be summoned to be present at the hearing of the appeal and we should be allowed to cross-examine him. On the date fixed for the hearing of the appeal, I went to Palanpur. When we went to the Court of the Political Agent, his clerk told me that the Saheb wanted to see me in his Chamber. When I went to his room he told me that the Lower Court was quite wrong in preventing me.

from cross-examining the defendant, that the defendant had been summoned to be present and that I could cross-examine him. He added, however, that I should not handle the Subedar Major roughly but take him gently in cross-examination. I assured him that it was not at all my purpose to handle the defendant roughly in the course of cross-examination. After I left, the Political Agent sent for the defendant. I do not know what happened between them but soon afterwards I was called in again and the Political Agent told me that he had spoken to the defendant and advised him to come to a settlement and suggested to me that I should advise my client to agree to a compromise. Ultimately a settlement was arrived at, my client giving up a portion of the heavy interest that he had charged and each party bearing his own costs.

JUDGE RECEIVES DEFENDANT

Sometime in 1910, I and Mr. Taraporewala were engaged for the defendant in a case pending in the Court of the Assistant Political Agent at Rajkot who was a Military Officer. The plaintiff was a cloth merchant of Bombay and Mr. Branson was engaged to appear for him. The case had arisen under the following circumstances. My client, the defendant Harbamji, who was a brother of the then Ruling Prince of Morvi was administering the state of Nawanagar during the absence of Jamsaheb Ranjitsinghji in Europe. The plaintiff was arrested and kept in custody for some time in Jamnagar by the order of Harbamji. Harbamji had then left Jamnagar and was at the date of the suit residing at Rajkot. The plaintiff sued him in the Rajkot Court for heavy damages for wrongful arrest and imprisonment.

The hearing of the case was fixed during the Cricket Week at Rajkot. The Judge wanted to see the cricket matches and therefore, the Court sat from 12 to 3. One day while Branson was arguing some point, a peon of the Judge brought in the card of a visitor. The Judge told the peon

to put a chair near him on the dais and to usher in the visitor. The visitor came in, the Judge rose and shook hands with him and made him sit in the chair near him. The visitor was none else than my client Harbamji, the defendant. I was surprised to find my client visiting the Judge like this when the case against him was being heard. Branson apparently did not know my client and he turned to me and asked who the visitor was. I told him that he was my client. On that Branson looked furious and uttered in my ears condemnation of the Judge in very strong language. The case lasted for ten days and we won. The suit was dismissed with costs. The decision was right but the above incident was unfortunate.

CRIMINAL CASE DISPOSED OF BY CONSENT

One cannot imagine a criminal case being disposed of by consent but this did actually happen once. A young man in Ghogha was charged with culpable homicide not amounting to murder and was sentenced to transportation for life. An appeal was filed and I was engaged for the accused appellant. The appeal was heard during the May vacation by a Bench consisting of Justices Mirza and Percival. The record was voluminous and the appeal took over two days to hear and the Judges reserved judgment.

After a couple of days, the matter was put down on board for judgment. Justice Mirza delivered his judgment acquitting the accused but Justice Percival was for conviction and confirming the sentence. They announced that in view of this difference the matter would be referred to a third Judge for final decision. I then went to the Law Library and other cases were being heard. Mr. Harilal Parekh a leading criminal lawyer of Ahmedabad who was instructing me in the appeal, came to me in the Library after a little while, and told me that if the third Judge agreed with Justice Percival, it would be very hard on the accused and that I should move the Judges to reconsider

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the matter and dispose of the appeal by agreement amongst themselves. I told Harilal that judgment had been already delivered and I could not ask the Judges to reconsider the matter. But he pressed me very much and I went to the Court with him.

Some other appeal was being heard at the time and so I waited till that was finished. I then told the Court something to the following effect. "From the fact, that your Lordships have so completely differed, it is apparent that the merits are such that two divergent views are possible. It is difficult to say with any confidence which view is right. There is room, therefore, for your Lordships to re-consider the matter and adjust your views. I am pressing this upon your Lordships because my client has suffered long both in mind and money during the pendency of these proceedings and a further hearing after the vacation by a third Judge will entail additional expenditure and distress of mind to him. May I therefore urge upon your Lordships to attempt some adjustment of views?" To my surprise, the Judges agreed and they said they would retire for further consideration and call us when they were ready.

After about an hour the Judges returned to the Court and we were called. Justice Mirza said (I am recalling as far as I remember the exact words) "We have arrived at a compromise and will convict your client of grievous hurt." While he was saying this, I was feeling very uncomfortable fearing that the Government Pleader who was appearing for the Crown in the appeal would get up and object to the whole proceedings. Luckily, he did not. Justice Percival then turned to me and asked "What sentence will you take? We suggest five years' rigorous imprisonment." I rejoined that that was too much and two years would be enough and the Judges consulted together and said "We will give three years." All the time I was very apprehensive that the Government Pleader would intervene and upset the whole apple cart.

QUEER LITIGANTS

1. AHMEDBHOY HABIBHOY

AHMEDBHOY HABIBHOY was a wealthy Khoja businessman in Bombay. He was for many years the Chairman of the Bank of Bombay. He was a very close-fisted and miserly old man but had great love of litigation and during his life-time he must have put a lot of money in the pockets of lawyers. People used to say that the legal profession should raise a statue to him because he was their great benefactor. In the course of his various litigations, he had gone round to many solicitors' firms in Bombay. He would employ one firm and when at the end of the litigation, the firm presented him with the bill of costs, he would go to another firm of solicitors to contest the bill of his first solicitors and so he employed many solicitors one after another. I held his general retainer for many years.

One day, a partner of a leading solicitors' firm came with Mr. Ahmedbhoy for a conference. I saw that Mr. Ahmedbhoy had shifted to a new firm of solicitors. At the end of the conference, I asked the solicitor to stay on for a while as I wanted to speak to him. After Ahmedbhoy left, I said to the solicitor that I was surprised that he had taken up Mr. Ahmedbhoy's work because he must be aware of the habit of Ahmedbhoy to leave his solicitor as soon as the bill of costs was presented to him and go to another solicitor to contest that bill. The solicitor told me that he was fully aware of Ahmedbhoy's ways but he knew how to deal with him. Mr. Ahmedbhoy, he said, would leave him if he presented his bill to him. He said he would never present his bills to Ahmedbhoy so that no occasion would arise for Ahmedbhoy to leave him and go to another solicitor and that when Ahmedbhoy was dead his executors would pay the bill of costs fully. He further said that if he himself

died before Ahmedbhoy, his firm would recover the bills from Ahmedbhoy's executors, who in any event, would not be as cantankerous as Ahmedbhoy.

The result was exactly as the solicitor had anticipated. When Ahmedbhoy died leaving no will, his heirs came to a settlement between themselves after filing an administration suit and then paid fully this firm's bills which had accumulated to over two lakhs of rupees.

2. CHHABILDAS LALLUBHAI

Chhabildas Lallubhai, a wealthy Bhansali citizen of Bombay was a great character in the eighties and nineties of the last century. Once a set-back line was contemplated by the Municipality in which part of his land was to be included. In order to prevent this, it is said, he erected the whole frontage of a building on that land in one night and thus defeated the intended object of the Municipality. I became acquainted with him and he always proved himself a good friend. He assisted me in getting the votes of his European and Indian friends at the municipal election in 1892 and subsequent years.

He was very resourceful and I remember how on one occasion he baffled Mr. Inverarity. I was present in Court when this happened. Chhabildas bought a property for about Rs. 25,000/- at a mortgagee's sale. The mortgagee conveyed the property to Chhabildas but the mortgagor refused to give possession alleging that the sale was irregular and collusive and at a gross undervalue. Chhabildas filed a suit in ejectment against the mortgagor and the mortgagee was joined as defendant. Mr. Chhabildas gave evidence denying the allegations of the mortgagor. Mr. Inverarity was cross-examining him on behalf of the mortgagor. Inverarity asked him, "Will you sell the property for Rs. 30,000 " Chhabildas in an emphatic tone replied "No." Inverarity again asked him, "Will you sell it for Rs. 35,000?" Chhabildas again said "No." Inverarity went on like this upto Rs. 60,000, and still Chhabildas said "No." Inverarity

thought he had established his case of undervalue because if Chhabildas was not willing to sell for Rs. 60,000/- the property which he had bought only a very short time ago for Rs. 25,000/- the property must be worth more than Rs. 60,000. Inverarity then asked Chhabildas: "Why won't you sell for Rs. 60,000/- property for which you have paid only Rs. 25,000?" Promptly came the answer: "Chhabildas always buys immoveable property but having bought, he never sells whatever profit is offered to him." This brought down the whole superstructure of Inverarity's cross-examination on the point of undervalue.

I remember another occasion on which he figured in the witness box. A suit was filed by one of his sons or grandsons for partition of properties held by Chhabildas on the ground that they were ancestral properties. I was appearing for some of his minor grandsons. Raikes was appearing for the plaintiffs. Chhabildas was being cross-examined by Raikes in the course of which some correspondence between him and his son Ramdas, who was a Barrister practising at Nagpur, was being read. In one of the letters, Ramdas had written to Chhabildas saying that he had not much of practice at Nagpur and that his wife was presenting him with a child every year. Chhabildas shouted from the witness box: "Ask him whose fault?" This made all the Court including Justice Beaman burst into laughter.

He was asked about some heavy item appearing in the accounts, the suggestion being that that was part of the nucleus of ancestral property by which Chhabildas made his fortune. Chhabildas' explanation about that item was that it was his share of the freight which he earned along with another partner, a military official, by several voyages that a rotten ship which they had bought for a modest amount and which could never have gone out of the harbour, was supposed to have made to Abyssinia during the Abyssinian War.

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Once he was going on a voyage to England and wanted a single-berth cabin for himself in a P. & O. Steamer but the P. & O. people would not oblige him and placed him on the top berth in a two berth cabin with a European passenger in the lower berth. Chhabildas on the first night of the voyage behaved in such a filthy manner that his fellow-passenger begged the Captain to put him somewhere else and so, Chhabildas secured for himself alone a two-berth cabin. He used to relate this story himself. He was a clever and selfmade man but of little education, and his talk and behaviour bordered on vulgarity.

Once he was summoned to serve on a special jury in the Sessions Court in a case which was expected to last several days. He was unwilling to be empanelled and before the appointed day tried his best with the prosecution as well as the defence to agree to challenge him but without success. On the day of the trial he found himself empanelled. He walked into the jury box and then sprang a surprise. He stood up and with a medicine bottle in his hand told the Judge that he was suffering from dysentery and would be obliged to go to the W.C. at short intervals. The Judge promptly discharged him.

AS A JUDGE

WHEN I became a Judge, I was confirmed in my view that the work of a Judge was much less exacting though possibly more responsible, than the work of Counsel. I remember Jenkins once remarked jocularly about a Judge's work "When counsel on both sides have thrashed out a case, unless you are an absolute fool, you can't go wrong".

I took my seat on the bench early in June 1920. Mr. Bahadurji on behalf of the Bar welcomed me. In reply, I emphasised that it was not enough that justice was done but that parties and counsel should feel that justice was being done and that for that purpose a judge should give patient hearing. I further said that I would very much miss the free and pleasant atmosphere of the Bar Library.

During the short period of four months that I was on the bench, I sat in the Criminal Sessions for 40 days which was a record length for criminal sessions in those days.

In an earlier chapter, I have narrated my extraordinary experience of the disposal of a criminal appeal by consent. I did something similar in the trial of a criminal case at the Criminal Sessions but in a manner and under circumstances quite different. A mehta (clerk) in an Indian firm was charged with criminal breach of trust, embezzlement and other serious charges as well as with some minor charges of cheating etc. I had read the proceedings before the committing magistrate. The evidence recorded had created the impression on my mind that the serious charges could not be maintained but that the minor charges could be established. There were many witnesses and many entries had to be traced through numerous books and the hearing would have occupied several days. When the case was called on, I put to the Advocate-General who was pro-

building, the Examiner Press belonging to the Archdiocese was located and two small portions were occupied by a Parsi clock-maker and a hair-dresser respectively. As the Press had to be moved because of the impending acquisition by the Municipality, the Archbishop wanted the Press to be shifted to another building in the same locality which also belonged to the Diocese. That building consisted of four floors and was occupied by fifteen different tenants who had business offices there. The Archbishop wanted these 15 tenants as well as the hair-dresser and the clock-maker to vacate in order that the Examiner Press could be removed there and the Examiner Press building could be handed over to the municipality. The tenants having declined to vacate, suits were filed against them.

When the suits were called on before me, Mr. Strangman, the Advocate-General appeared for the plaintiff while the 17 tenants were represented by different counsel. I enquired of Mr. Strangman how long the cases would take and he replied that altogether they were likely to occupy a week. After the pleadings were read, I came to the view that this was a case eminently fit for adjustment. So I called the Manager of the Press who was present in Court into the witness box and I questioned him about the various different departments of the Press. With regard to each department, he gave an idea of the space required. Then I put to him that in days of general want of accommodation, could he not arrange his departments in such a manner as to occupy less space? I then made him go through each department and got from him the barest minimum space necessary. When that was ascertained, it was found that it was possible to accommodate the whole Press in two floors of the other building. Then I questioned the 17 tenants one after another and got from them the minimum space they could do with although with some inconvenience. It was then found that all the seventeen tenants could be accommodated in the remaining two floors of the other

building. Then remained the difficulty about the clock-maker and the hairdresser in the Examiner Press Building who were also asked to vacate in order to enable the Archbishop to hand over the building to the Municipality. The clockmaker was a Parsi who was known to be in opulent circumstances. I put to him that as the acquisition by the Municipality had been pending for a considerable time, he must have thought of getting some other premises for shifting his business and after a few questions he admitted that he had already contracted to buy a building in the Fort area, in a portion of which he could remove himself but he said that it would take some three or four months to complete the sale and get vacant possession of the portion he wanted to use himself in that building. On being questioned, the hairdresser admitted that he had made arrangements to shift to other premises, which he had agreed to rent but he would get possession of them only after three months. In order to settle the difficulty about these two tenants, I suggested to Mr. Strangman that he should send for Mr. Mackison, the Executive Engineer of the Municipality. When he came, I put to him that when the Municipality had delayed taking possession of the building for nearly a year and a half, could they not stay their hands for a few months more? He agreed. Thus all parties were satisfied and by 2 o'clock, a consent decree was taken in all the 17 suits giving effect to the adjustments agreed to. This method of adjusting the convenience of landlords and tenants was also much appreciated by the members of the Bar because while one Rent Act suit would ordinarily take a day or two, by this process of adjustment half a dozen suits could be disposed of in a day and counsel could work out six briefs instead of one. I remember the late Sir Dinsha Mulla, some time after I resigned the Judgeship, showing me a fine new motor car that he had bought and said that that was a Rent Suits Car. I could not grasp at the moment what he meant. He explained that because of my method of disposing of rent suits by adjustments wherever possible,

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he had earned considerable fees in my court and had bought that car from those fees.

About the middle of October, a few days before the October recess, I resigned my post in order to stand for election to the Indian Legislative Assembly.

THE BAR

AMONG the High Courts in India, only the High Courts of Bombay, Calcutta and Madras have original jurisdiction. The other High Courts are purely Appellate Courts. On the Original Side of the Calcutta and Bombay High Courts, only Barristers had audience for some time. In Madras, many years ago, pleaders were allowed audience on the Original Side. In Bombay an examination was instituted in which persons who had obtained the Degree of LL.B. of the Bombay University and had thereafter put in attendance for one year on the Appellate Side and one year on the Original Side of the High Court, were allowed to appear, and in order to pass the examination a high percentage of marks had to be obtained. Those who had passed only the LL.B. examination or the High Court Pleader's examination were given audience only on the Appellate Side of the Bombay and Calcutta High Courts. Since the Bar Councils Act, those privileged to practice on the Original Side are called Advocates O.S. while all others are styled Advocates. This system had the effect of making it difficult for Indians to become eligible for practice on the Original Side of the Bombay and Calcutta High Courts. At the time I joined the Appellate Side Bar, it was felt that it was unfair that persons who had passed the University LL.B. examination or the High Court Pleader's examination, were debarred from practising on the Original Side, while persons who had passed a more easy examination in England had the privilege of practising on the Original Side.

When I was admitted as an Advocate on the Original Side in 1898 there were comparatively few Indian Barristers practising on that side. As years went on, more and more Indians qualified in England joined the Bar and an in-

creasing number also passed the Advocates' examination and began to practice on the Original Side. In recent years, the number of practitioners on the Original Side has very much swollen and at present there are about 300 to 400 on the Roll. The result is that while the available work is largely monopolised by senior counsel, the juniors do not get sufficient opportunity to secure a footing. Even in cases where two counsel are briefed, two seniors are often briefed instead of one senior and one junior. There was at one time the system of "holding briefs" under which a senior counsel if he found himself unable to get into a particular Court, asked a junior to hold his brief and conduct the case. By this, several juniors got a chance of conducting cases and showing their mettle. I used freely to encourage juniors by asking them to hold my briefs. In 1921-22, some dissatisfaction arose as to the manner in which the holding system was worked by some members of the Bar. A Committee consisting of Strangman, the Advocate-General, and Bahadurji was appointed to investigate the matter. In the result, the holding system was abolished. I think that this has worked injuriously to the interests of juniors. The present state of things has led to considerable disappointment among the young people who joined the Bar with high hopes of getting into good practice.

As early as 1920, I felt that something must be done to remedy this state of things. On my return to the Bar after resigning the office of member of the Executive Council in 1923, I decided personally not to draw pleadings or appear in short causes and also raised my fees generally for all sorts of work. I tried to persuade my senior colleagues to lay down for themselves a similar self-denying rule so that more work would be released for the juniors. I however failed in converting them to my views. Dissatisfaction in the junior ranks is getting intensified and in my opinion it is imperative that some steps should be taken to bring about a more even distribution of work.

In January 1938, the question of the advancement of juniors was considered at a meeting of the Original Side Bar and it was resolved that the Chief Justice and Judges be requested to make rules for the creation of two divisions of the Original Side Bar, Senior and Junior, any member of the Bar of not less than 10 years' standing to be put in the senior list on his application. The senior Advocates were not to appear in Chambers or on a notice of motion or in a short cause unless the matter was of a complicated nature in which case he could appear along with a junior. Further a senior Advocate should not accept a brief for consent decree or adjournment except when a brief for hearing had been already delivered to him. Where two or more counsel are briefed, at the hearing and final disposal of any suit, there must be one junior among the counsel briefed. A Senior Advocate should not draw pleadings or affidavits but merely settle them after they had been drawn by a junior.

These proposals were submitted to the Chief Justice and Judges but nothing has been done. On August 3, 1939, the Bar Association passed the following resolution:—

"The Bar Association is of opinion that a division of the Bar into two sections and the introduction of a system similar to that of King's Counsel and Juniors as obtaining in England is desirable in the interests of the Bar and of the litigating public, as suggested in this Association's Resolution on January 31, 1938; and the Association trusts that Their Lordships will give effect to the proposals contained in the said resolution."

I think the whole question requires to be reviewed by the Chief Justice and Judges of the High Court with a view to early action being taken to secure an equitable distribution of work among the members of the Bar. It may be necessary in order to give effect to the recommendations made by the Bar Association to amend the Bar Councils Act and there should be no difficulty in doing that.

PRIVILEGES AND DUTIES OF COUNSEL

The principles governing the privileges and duties of Counsel were very clearly defined by the Full Bench in the case (8 Bombay High Court Report page 126) already referred to in another connection. The Court laid down that every subject in all Courts of Justice is entitled to assert and defend his rights, and to protect his liberty and life by the free and unfettered statement of every fact and to make use of every argument and observation that can legitimately (i.e., according to the rules and principles of laws) conduce to these important ends. Every individual has this right, and may exercise it in his own person or he may commit its exercise to counsel, who takes it as his delegate; its nature and character are not altered by this delegation; it is still the same, to be exercised in the same manner and for the same purposes, and subject to the same liabilities and control, as it would be if the party were pleading his own cause. These considerations, they said, would at once show the fallacy of the argument that instructions to counsel are the test by which it should be determined whether or not the line of duty had been passed. No instructions, it was held, could justify observations that are not warranted by facts proved, and it is a duty of counsel towards his client to use his own judgment, experience and discretion and as a result, whatever be his instructions, to exclude all topics and observations of which the case does not properly admit subject to its just and necessary limits. This right, they said, when duly exercised and directed to its proper purposes, should not be fettered or impeded, for if it be, an injury is sustained not by the client alone but by the whole community, whose interests are inseparably connected with a right essential to the administration of justice.

As regards the duties and obligations of Public Prosecutors and Counsel for the Crown equally pertinent observ-

ations were made. They quoted the following observation made by a learned Judge:—

“The counsel for the prosecution has most accurately conceived his duty which is to be assistant to the Court in the furtherance of justice, and not to act as counsel for any particular person or party. He should not by statements aggravate the case against prisoners or keep back a witness because his evidence may weaken the case for the prosecution. His only object should be to aid the Court in discovering truth. A Public Prosecutor should avoid any proceeding likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for grasping at conviction.”

I remember how on two occasions, the above principle was courageously followed. I was present in the second Appellate Court when a criminal appeal was being argued. When the pleader for the accused finished, the Court turned to Rao Saheb Mandlik, then Government Pleader, and asked what he had to say in support of the conviction. Mandlik answered: “I am afraid, My Lords, I cannot support the conviction.” On another occasion, when Government appealed against the acquittal by Mr. Jacob, Sessions Judge of Poona, of certain persons implicated in what was known as the Daruvala Bridge Riot Case, the appeal came on for admission before Justice Jardine and Justice Parsons. The Court to whom the records and proceedings had as usual been circulated asked Mr. Basil Lang, the Advocate-General who appeared for Government: “Who advised Government to appeal in this matter?” Lang answered “Not I” and sat down. The appeal was dismissed.

In a prosecution for defamation, the complainant alleged that on a particular day, the accused in the company of two other persons went to the office of Messrs. Craigie, Lynch & Owen, Solicitors, and that the accused had there made a statement to Mr. Craigie which had been taken

down in writing and which the prosecution was desirous of having produced and put in evidence. Mr. Craigie was accordingly called as a witness but claiming professional privilege, he declined to say whether the accused had visited him on the day in question alleging that he had learnt the name of his visitor in the course of and for the purpose of his professional employment. The Chief Presidency Magistrate made a reference to the High Court on the subject. The High Court (Justices Candy and Fulton) held that where a solicitor claims privilege under Section 126 of the Indian Evidence Act, he is bound to disclose the name of his client on whose behalf he claimed the privilege. The mere fact that his client's name had been communicated to him in the course and for the purpose of his employment as solicitor by another client does not entitle him to refuse to disclose the name, unless it was communicated to him confidentially on the express understanding that it was not to be disclosed. A solicitor however was not at liberty without his client's express consent to disclose the nature of his professional employment. Section 126 of the Indian Evidence Act protects him from being compelled to disclose not merely the details of the business but also its general purport, unless it be known *aliunde* that such business falls within proviso I or II of the Section. (*I.L.R.* 18 *Bombay*, 264, April 4, 1893.)

BHAISHANKAR NANABHAI

vs.

L. M. WADIA & HIRALAL SAROJAYA

The limits of the privileges of Counsel were laid down in this case by a full bench consisting of Chief Justice Jenkins, and Justices Candy and Tyabji in 1899. L. M. Wadia, a Barrister in the course of a criminal trial before the Sessions Judge at Ahmedabad said as follows with regard to

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Mr. Bhaishankar, a solicitor who appeared on the other side:—

“Mr. Bhaishankar in consequence of a long standing enmity with the accused had been tampering with witnesses and getting up evidence to ruin the accused.”

The Advocate-General presented a petition praying that disciplinary action should be taken against Wadia for having made this charge which was entirely unwarranted. Mr. Wadia claimed immunity by reason of the privilege accorded to an Advocate in the conduct of his client's case and urged that in any case he acted on instructions and without malice. After referring to the leading authorities on the subject of the immunity of judges and counsel with regard to anything said by them in the course of performing their duty, the Chief Justice observed that there was a sharp distinction between suits or criminal proceedings at the instance of the injured party and the exercise by the Court at the instance of the Advocate-General of its disciplinary powers. The reason to which the licence owes its original has no place in an answer to disciplinary jurisdiction set in motion by the Advocate-General on the ground that in the interests of the profession of which he is the head, he thinks the conduct of one of its members is such as to demand enquiry. A jurisdiction thus guarded need never stand in the way of a fearless discharge by an honourable Advocate of his duties towards his client.

As regards the duty of counsel in relation to prisoner's instructions, the Chief Justice quoted the following resolution passed by the Judges of the Queen's Bench Division in England:

“That in the opinion of the Judges it is contrary to the administration and practice of the Criminal Law as hitherto allowed that counsel for prisoners should state to the jury as alleged existing facts matters which they have been told in their instructions on the autho-

riety of the prisoners, and which they do not propose to prove in evidence."

The Chief Justice further observed: "As the license of the Advocate has been so much discussed before us, I cannot leave this part of the case without reminding judicial officers that the licence creates a corresponding duty in them, the duty of keeping the exercise of that licence within its proper limits lest it should grow into a scandal." He further observed "No one can be more averse than I am to shackle the proper efforts of the counsel and it is only to keep pure the traditions of that most honourable profession that I alluded to these matters." He further said "In this country judges are explicitly and designedly armed by the legislatures with large powers and control as is apparent from Sections 150 and 152 of the Evidence Act which indicates principles that will be admitted to be sound by all honourable advocates and the public and which judicial officers should ever keep clearly before them."

In the result, the Court accepted the explanation of Mr. Wadia and discharged the rule (2 *B.L.R.* page 3).

POLITICAL ACTIVITIES

When Mr. Gandhi established the "Satyagraha Sabha" following the introduction of the Rowlatt Bills, certain lawyers practising in the Courts of the Ahmedabad District, among them being two Barristers, Jeewanlal Varajrai Desai and Vallabhbhai Patel, signed what was known as the Satyagraha Pledge by which they bound themselves in the event of the Rowlatt Bill becoming law, to refuse civilly to obey those laws and further promised that in that struggle, they would follow truth and refrain from violence to life, person or property. The District Judge reported this to the High Court recommending that suitable action be taken against those practitioners.

The High Court accordingly issued a notice why disciplinary action should not be taken against them and the

matter was heard by a full bench consisting of Chief Justice-Macleod, Mr. Justice Heaton and Mr. Justice Kajiji in October 1919. I appeared for two of the respondents, and Jayakar and Govindlal Thakore appeared for the rest. Bahadurji, the acting Advocate-General, appeared in support of the notice. Chief Justice Macleod in delivering judgment said that while the Court had nothing to do with the political views of the respondents nor with expressions of opinion on their part however strong, it must be remembered that Advocates and Pleaders were a privileged class enrolled not only for the purpose of rendering assistance to the court in the administration of justice, but also for giving professional advice for which they were entitled to be paid by the members of the public and that their position, training and practice gave them immense influence with the public and their example must necessarily have effect on the public. He further said that the pledge involved the professional character of these practitioners. Their duty as such practitioners is to advise their clients to the best of their ability as to what the law is—not as to what it should be in their opinion. He was of the opinion that it would be impossible for them to keep their duties to the Satyagraha Sabha separate from their professional duty. He added, “A very sound principle to remember is that those who live by the law should keep the law.” The Court did not take any action but gave those practitioners a warning that any further action would depend entirely on the developments, if any. The Court accordingly adjourned the notice indefinitely with leave to the Advocate-General to move for its restoration to the Board should occasion arise. (*I.L.R. 44 Bombay 418.*)

PROFESSIONAL MISCONDUCT

In 1934 the Advocate-General presented petitions alleging misconduct against three members of the Bar—Messrs. K. B. Bharucha, P. R. Bharucha, and M. R. Masani. K. B. Bharucha and P. R. Bharucha had been convict-

ed and sentenced by the Chief Presidency Magistrate for having, between October 1, 1932 and January 1, 1933, managed and assisted the operations of the Bombay Provincial Congress Committee Emergency Council which had been declared unlawful by the Government of Bombay under the Criminal Law Amendment Act and for having taken a leading part in the publication of the *Congress Bulletin*. The charges against Masani were that he was the President of this 52nd Emergency Council of the Bombay Provincial Congress Committee which had been declared an unlawful association and that as President, he had announced and convened a meeting of that unlawful association at Chowpatty. The petitions after reference to a Committee of the Bombay Bar Council appointed by the Chief Justice in accordance with the provisions of the Bar Councils Act, were heard by Chief Justice Beaumont and Justices Rangnekar and Divatia.

The Court while holding that conviction for a criminal offence was evidence of misconduct and that the High Court had jurisdiction to take disciplinary action against advocates so convicted, stated that it was not the duty of the Court to impose penalties for misconduct unconnected with the exercise of the profession, which was either not punishable or had been or could be punished under the law of the land and where the ordinary law had enforced a penalty. The Court said that there was no reason why disciplinary jurisdiction vested in the High Court should be employed in aid of the criminal law, but where the offence for which a practitioner had been convicted by the Criminal Court involved moral turpitude, the Court had to see whether the practitioner had shown himself to be unworthy of the confidence of the Court and unfit to be entrusted with the business of his client. Being members of an unlawful association and in management of its affairs did not, the Court held, render them unfit for the exercise of their profession. The rule was accordingly discharged and no order as to costs was made. (36 B.L.R. 1136.)

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The Advocate-General applied to the Privy Council for special leave to appeal. The Privy Council refused such leave but said that the observations of the High Court were too wide and that misconduct need not be in the practitioners' professional capacity and that conviction of a criminal offence was evidence of misconduct on which the High Court could take disciplinary action. (37 B.L.R. 722.)

THE DUAL SYSTEM

In the High Courts of Bombay and Calcutta, counsel on the Original Side can only appear when instructed by a solicitor. This system has evoked considerable criticism and from time to time its abolition has been advocated. If that were done, Advocates could take work direct from clients. I myself was in favour of this change at one time but my experience extending over more than 40-years has convinced me that the dual system conduces to methodical preparation of a case and its effective presentation.

The abolition of the dual system has been advocated by some on the ground that the costs on the Original Side which are heavy will thereby be reduced. That heavy costs are sometimes incurred in suits on the Original Side is not due to the dual system but is due to the anxiety of clients to secure the services of some leading counsel whose scale of fees is, by the operation of the law of supply and demand, high. If litigants want to have their litigation conducted at lower cost, it is entirely in their hands, provided they are satisfied with the services of less expensive counsel. In some cases, costs mount up because of the obstinacy of litigants who will not arrive at a reasonable compromise although advised by their solicitor and counsel to do so. On occasions, I had to put considerable pressure on some clients to make them arrive at a compromise which I thought would be in their interests and which would save them from ruinous litigation. In this matter, the Judges also can, within certain limits, play a useful part. If, where circumstances

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so demand, the Court exercises a mild judicial pressure the parties may be saved heavy costs.

I remember a case in which the whole dispute between the parties had narrowed down to Rs. 1,200/- and the learned Judge patiently heard the case for ten days with the ultimate result that many thousands of rupees were spent by the parties in costs. In a case like that an attitude of strict neutrality and abstention from the use of a certain amount of pressure to make parties save themselves from ruination, is in my opinion misconceived.

SPECIALISATION AT THE BAR

In India there is no specialisation at the Bar as there is in England. An Advocate or Pleader has to deal with a case of Hindu Law, then a case of Company Law, Mercantile Law, Contract Law and so on. He has to switch off from one subject and apply his mind to another. If a question in engineering or medicine turns up, he has for the occasion to study the particular aspect of engineering or medicine affecting the case. This comes in the way of a practitioner devoting himself to a particular subject and becoming an expert in it.

I remember a case in which I had to make a study of a particular disease and its treatment. A Parsi had engaged the services of a nurse who was also a Parsi to nurse his wife who was ailing. The nurse attended on the patient for a long time. The wife died and some time after the nurse alleged that after the wife's death the man had given a promise to marry her and she filed a suit for damages for breach of promise of marriage. I appeared for the plaintiff nurse. The defendant admitted the promise but pleaded that he was not bound to keep the promise because he had discovered that the plaintiff was suffering from venereal disease. The onus being on the defendant to prove his allegation, he called as his witness a doctor who had treated her. In order to cross-examine him, I had to study the symp-

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toms and treatment of the disease. I cross-examined him at great length and showed by reference to medical books that the symptoms he alleged he found were also symptoms of other diseases which were easily curable and not contagious and also that the prescriptions he produced were not necessarily applicable to the disease alleged. The doctor absolutely broke down in cross-examination. He was asked how he came to give the information to the defendant of his treatment of the plaintiff and the nature of the disease and thereby broke the confidence reposed in him by the patient. He had no explanation to give and the Judge remarked that no decent doctor would have given such information. While the law prevents a lawyer from giving evidence of any confidential information that he may have got from his client in the course of his employment, there is no such legal bar preventing a doctor giving evidence about what he may have learnt in the course of his employment. Although therefore a doctor may be compelled to give evidence in a court of law it is his moral obligation not to divulge to another person such information. The Judge disbelieved the doctor and awarded Rs. 8,000 damages.

CORDIAL RELATIONS WITH THE BAR

My personal relations with the members of the Bar have been very cordial. On many occasions, they have entertained me at dinner and I have made many friends among them. The Bar Library is the one spot where I find it delightful to pass my time whenever I can. It is a place to which the laws of libel and slander and sedition do not apply and judges, practitioners and the Government and their measures are freely discussed without any restraint. The jokes that I enjoy most in that privileged room are jokes on myself.

In February 1937, I completed fifty years of my career as a lawyer. The Bar celebrated the event by entertaining me at dinner and raising subscriptions for my portrait which has been placed in the High Court Library. It was



unveiled by Sir John Beaumont, the then Chief Justice. The surplus balance of the fund raised was handed over to the Bombay Bar Council for awarding annually a gold medal to the student who stood highest in the Advocate's examination. The Bar also passed the following resolution:

"The members of the Bombay Bar offer their felicitations to Sir Chimanlal Setalvad on the completion of 50 years of his career as a lawyer and places on record their appreciation of the services rendered by him in maintaining the dignity and privileges of the Bar and in setting a high example of fearless advocacy."

The Times of India in its issue of February 20, 1937 referred to this occasion in the following terms :

"Sir Chimanlal Setalvad completes his Golden Jubilee in the legal profession this week. Seniority at the Bar is counted not so much by the number of years as by the number of briefs, yet fifty years in the active practice of a learned and laborious profession is a noteworthy event in the life of any individual. Professional success came to him almost from the start and he soon made, and has throughout maintained in spite of multiple and many-sided activities, a unique and honourable position in the profession. The secret of his popularity and unfading youthfulness lies in the spirit and temper in which he has taken his public and professional work. Cool and composed, placid and unperturbed, he everywhere breathes an atmosphere of repose and friendliness; he takes the trials and triumphs of professional contests in an equable temper. For him, there is no giddy height of elation and no gloomy depth of depression.

"Both within and outside his profession, Sir Chimanlal has lived a broad rather than an intense life. What has secured him warm place in the regard and esteem of his colleagues is his breadth of outlook and friendliness of spirit, along with a certain simplicity of nature

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which enables him, in spite of all honours and distinctions that have come to him, to mix easily with all and sundry and take a genuine interest in the little affairs of lesser men. Politically, Sir Chimanlal belongs to a generation almost extinct today. He is among the few survivors of that school of realists and humanists who strove to rear the fabric of Indian politics upon the broad foundations of tolerance and understanding, sweet reasonableness and ordered progress. He has endeavoured to keep the public life of this country above the narrow bigotry of latter day nationalism, and he is not among those who believe in stimulating national sentiment at the cost of racial bitterness."

At all Bar dinners, members always call upon me to speak. When Bomanji Wadia on his retirement from the Bench was entertained at dinner by the Bar, one part of the speech that I made elicited great applause and laughter. What I said was something like this: "Mr. Wadia with all his intellectual equipment cannot be expected to remain idle and so one wonders what he will do. Will he start an agitation for Parsistan? No, he is much too sensible to do anything of that sort. Will he join the Non-Party Conference which is a party of all leaders and no followers? No, he would not do that. Will he join the Liberal Party which is a Party of many leaders and few followers? I don't think he will. Will he join the Congress? If he does, he will have to go to jail and then get ill which will lead to his release. When so released, if he left the Congress he would be maligned as a traitor."

Munshi who had been recently released owing to severe illness and had resigned from the Congress, I believe, enjoyed the joke very much.

LEGAL EDUCATION IN BOMBAY

THE state of legal education in Bombay was very unsatisfactory for a long time. Students who having passed the Matriculation examination had joined any Arts College were allowed to fill in terms at the Government Law School. Students who thus joined the Law School were busy with their Arts studies and had no interest in the lectures delivered at the Law School, for they could appear for the LL.B. examination only two years after taking their B.A. degree. So, it happened that by the time a student took his B.A. degree he had finished his attendance at the Law School and it was after that that he really began his studies in law. I remember when I was a resident student at the Elphinstone College at Parel, half a dozen students used to form a combine and each one went in turn to the Law School and got presence marked for all the six. As the students had no interest in the lectures, the professors naturally also lost all interest in their work. Moreover, the appointments for the professorships of the Law School were not always made on merits but for making provision for young barristers struggling at the Bar. There were only three professors and there were more than 400 students.

In order to remedy this unsatisfactory state of things, some of us conceived the idea of founding a private Law College. A Managing Board was constituted with Mr. Justice Badruddin Tyabji as Chairman and Narayan Chandavarkar, myself, Rustom K. R. Cama Solicitor, and N. V. Gokhale a pleader on the Appellate Side, as members. We secured the services of six competent professors and applied to the University on November 15, 1897, for the affiliation of this institution which was styled "The Bombay College of Law". Justice Candy, a Civilian Judge of the High Court who was then the Vice-Chancellor of the University, started the bogey of sedition and minuted that he apprehended that the professors of the proposed

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College might teach "sedition to the pupils" and was therefore against affiliation of the College. Several members of the Syndicate including Justice Ranade, Dr. Mackichan, Wasudev Kirtikar and others vehemently disagreed with the Vice-Chancellor. Considerable time was lost in the controversy whether the Senate had the power to recommend affiliation to Government or whether Government alone had the right to affiliate under Section 12 of the Universities Act. Ultimately the Syndicate decided by a majority to recommend affiliation to the Senate.

When the matter came before the Senate on June 27, 1898, various attempts were made to smother the proposition. When the proposition for affiliation was moved, Starling, a barrister, proposed that the Senate pass on to the next business. This was negatived by a large majority. Starling still persisted in his attack and moved that the Syndicate be asked to review their decision. The Senate, however, rejected Starling's motion and resolved to recommend affiliation to Government.

Government who were very unwilling to allow the new College to come into existence, promptly appointed a Committee with Giles, the Director of Public Instruction, as Chairman, to enquire into the working of the Government Law School and to make recommendations on the changes required to be made. The Committee made its report recommending drastic reorganisation of the School. Government thereupon reorganised the Law School mainly on the lines recommended by the Committee. All this time from June 27, 1898 to February 1899, Government pigeon-holed the recommendation of the Senate for the affiliation of the new College. On February 25, 1899 Government wrote to the Senate refusing affiliation of the College and said that in view of the improvements made in the Government Law School, it was inexpedient to establish a new College. Now there are five Law Colleges in the Presidency.

EXECUTIVE AND JUDICIAL FUNCTIONS —UNHOLY COMBINATION—

FOR the purposes of revenue administration, the Presidency of Bombay is divided into three divisions, Northern, Central and Southern, each in charge of an officer who is called Commissioner. Under the Commissioners are Collectors of Districts. Under the Collectors are Assistant Collectors and Deputy Collectors and under these officers are what are called Mamlatdars in charge of various talukas. Under the Mamlatdars are Aval Karkuns. The Aval Karkuns whose salaries range from Rs. 40 to Rs. 60 a month, are invested with criminal jurisdiction of third class magistrates. The Mamlatdars are first or second class Magistrates, and Assistant Collectors and Deputy Collectors are First Class Magistrates. The Collector of the District is also the District Magistrate, and besides having the powers of a First Class Magistrate, he hears appeals in criminal cases decided by the Mamlatdar and Aval Karkun Magistrates. The Collector-cum-District Magistrate is also the head of the police in the district, and important prosecutions are launched by the police with his sanction and approval.

The appointments, postings, promotions and transfers of these executive officers who also exercise judicial functions are in the hands of the Executive of the Presidency. The judicial work of these officers does not occupy more than one-eighth to one-fourth of their time. Their principal concern is their executive work of collecting revenue and maintaining order. The habit of mind that these officers necessarily acquire as executive officers is not conducive to the balanced and detached frame of mind essential for judicial officers. Moreover, the subordinate magistrates are naturally anxious to secure the good opinion of the higher revenue and police officers for their advance-

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ment. Similar arrangements also obtain in other Presidencies with some variations in duties and designations.

The police authorities in their zeal consider Magistrates who convict in prosecutions started by them as more efficient than those who acquit. In the matter of appointments, promotions and postings of the subordinate magistrates the Executive acts on the recommendation of the Collector-cum-District Magistrate. Moreover, the Assistant and Deputy Collectors and Mamlatdars have to tour in the areas under their charge and it often happens that witnesses and accused in criminal cases have to follow these magistrates from place to place. In some big towns, there are Resident Magistrates who do only magisterial work but they also are subordinate to the Collector-cum-District Magistrate and their promotion also depends upon the opinion of the Collector. That some Collectors judge efficiency of magistrates and judges by the percentage of convictions is not a mere surmise. I know that one District Magistrate had the audacity to write to an Indian District and Sessions Judge that in the latter's Court, there were too many acquittals. The Judge reported this to the Chief Justice and the Collector was admonished for his action.

Owing to this combination of executive and judicial functions the liberty of the subject is imperilled and the public demand is that magistrates should be purely judicial officers and their appointments, postings and promotions should rest with the High Court.

The question of the separation of executive and judicial functions in this country is as old as the hills. Raja Ram Mohan Roy, the great Bengali patriot and reformer, in giving evidence before a Parliamentary Committee in London about 85 years ago, included in his memorandum the desirability of this reform. In 1886-7 a deputation from the Indian National Congress headed by Dadabhai Naoroji waited upon Lord Dufferin, the then Viceroy and Governor-

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General of India, and pressed for this reform. Lord Dufferin on that occasion called it "a counsel of perfection". The Congress at its annual session year after year repeated the resolution in favour of the separation of judicial and executive functions. Lord Kimberley and Lord Cross, Secretaries of State for India, pronounced in favour of this reform. At the sixth Bombay Provincial Conference held at Ahmedabad in 1893, a memorandum on this question was submitted by Pherozechah Mehta and a Committee was appointed to work out a scheme for this separation in the various districts of the Presidency. In July 1899, a comprehensive Memorial on the subject was submitted to Lord George Hamilton, the then Secretary of State for India, which was signed amongst others by Lord Hobhouse, Sir Richard Garth, retired Chief Justice of Bengal, Sir Richard Couch, Sir Charles Sargeant, retired Chief Justice of Bombay, Sir William Markby, Sir John Phear, Sir John Scott, Sir Rowland Wilson, Sir William Wedderburn, all retired Judges of High Courts, and by others. In 1908, Sir Harvey Adamson, the then Home Member of the Viceroy's Executive Council said: "The Government have decided to advance cautiously and tentatively towards the separation of judicial and executive functions in those parts of India, where the local conditions render the change possible and appropriate." In 1913, a public meeting of the citizens of Bombay was held at the Framji Cowasji Institute under the auspices of the Bombay Presidency Association, when a resolution urging the speedy inauguration of a scheme for such separation was adopted. The United Provinces Government had appointed a Committee presided over by Sir Louis Stuart, Chief Justice of the Lucknow Chief Court to prepare a scheme for separation. The Committee submitted its report but it was pigeon-holed by Government, and nothing further was done.

At the meeting of the Bombay Legislative Council on October 1, 1921, Rao Bahadur Chitale moved a resolution that executive and judicial functions be separated by

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entrusting criminal cases to the subordinate judges. Mr. Hayward (later Sir Murice Hayward), the Home Member, gave an assurance that Government would go into the whole question at an early date and asked the mover to withdraw the resolution, which he declined to do. When the resolution was put to the vote, an equal number of members voted for and against the resolution. The President, Sir Narayan Chandavarkar, gave his casting vote against the resolution on the ground that Mr. Hayward had on behalf of Government given an assurance that they would go into the whole question at an early date. In 1922 the resolution was again moved and was carried.

With this history of the question, the public expected, when the Congress ministries were formed in some provinces in 1937, that they would promptly take up this much delayed reform, but to the great disappointment of the public, they avoided taking any steps in that direction on the plea that as popular governments were in power, the executive would be properly controlled by them and the executive officers exercising judicial functions would not go wrong.

Referring to this question in the Madras Legislative Assembly, Mr. C. Rajagopalachari said: "Now that Congress is in office, we will see that executive officers will not go wrong and we shall control them." What ignorance this utterance shows of the real issue and of human psychology? How is it possible for officers who are occupied in doing executive work for more than three-fourths of their time and have thereby acquired the executive mentality with its rough-and-ready methods, to switch off to a judicial mentality during the remaining one-fourth of their time? When C. R. says "we shall control them", he lays bare the very evil that people want to eradicate. They do not want the judiciary to be "controlled" in any manner by the executive.

Really speaking, with a popular Government having a majority of the Legislature at their back, there is greater

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need of the judiciary being entirely independent of the executive. The more democratic a government is, the greater the need of an independent judiciary. This principle is illustrated by the completely independent position of the judiciary in England. All through the many years of bureaucratic rule, one excuse or another was put forward for not carrying out this reform though its necessity was always accepted. The Congress Government went back entirely and denied the very necessity of this reform.

In the various schemes put forward from time to time, it has been shown that such separation will involve very little additional expenditure if at all. The criminal work at present done by the magistrates who are executive officers can be easily transferred to subordinate judges whose numbers may be increased while a corresponding decrease may be made in the number of revenue officers by a rearrangement of areas under their charge. Various instances have come to light of the evils and miscarriage of justice flowing from this combination of functions. But as against the cases that come to light there must be many others that remain unknown.

Further, the subordinate judiciary may have to deal with cases where the action of the executive may be questioned, and unless the judiciary is completely free from any control and influence of the executive, the administration of justice can never be pure.

The following are some recent glaring instances of oppression of members of the public resulting from the combination of executive and judicial functions.

In 1938-9, Mr. Joshi, a leading pleader of Athni in the Belgaum District, was charged with outraging the modesty of a woman. Mr. Joshi alleged that the case was fabricated against him by the Sub-Inspector of Police owing to personal enmity. He also applied for the examination of certain witnesses whom the police had not examined. When the Magistrate granted his application, the Superintendent

of Police wrote a letter to the District Magistrate making aspersions against the Magistrate's impartiality and the District Magistrate transferred the case to another Magistrate. Mr. Joshi applied to the High Court and the Court severely commented upon the action of the Superintendent of Police and the District Magistrate and transferred the case to another district altogether observing that the action of the District Magistrate was calculated to undermine the prestige and independence of the trying Magistrate.

The Dharwar Magistrate to whom the case was transferred was, before he went to Dharwar, a supernumerary Magistrate in the Belgaum District and was sitting with the District Magistrate when the transfer order was made. On Mr. Joshi's application, the case was transferred to another Magistrate who acquitted Mr. Joshi and held that the complaint was false, groundless and malicious. It is obvious that if the Belgaum Magistrate had been a purely Judicial Officer and only subordinate to the Sessions Judge and the High Court and not to the District Magistrate, all this harassment of the innocent would not have taken place. In this case, Mr. Joshi had the grit and the means to fight for two years to vindicate himself but other people not so fortunately situated must be suffering injustice under the present system.

* * * * *

One Sadashiv who had been arrested in December 1942 was remanded on February 6, 1943 for a fortnight. In making this remand the provisions of the Criminal Procedure Code were not complied with. The case was ultimately transferred to the City Magistrate, Poona. On July 13, one month after the City Magistrate took cognizance of the case, the District Magistrate wrote to the Public Prosecutor asking him not to proceed with the case until investigations in another case had been completed. No application for such adjournment was judicially made to the City Magistrate in the presence of the accused or his legal adviser. The Public Prosecutor merely wrote a note to the City Magistrate send-

ing a copy of the instructions he had received from the District Magistrate, and the Magistrate made the order behind the back of the accused. The accused was thus indefinitely detained till the High Court taking cognizance of the case ordered his release.

* * * * *

About the same time, a Bench of the Calcutta High Court consisting of the Chief Justice and two other Judges made very strong remarks against the interference of the Chief Minister in the course of justice by writing letters to the District Magistrate in connection with a case pending before him. The Chief Minister who had by this time gone out of office, wrote to the papers disclaiming any interference in the course of justice on his part but alleged that the Home Department had issued confidential circulars to the Magistrates who had been trying cases under the Defence of India Rules and various Ordinances. If this is correct, it shows the extent of the evil proceeding from the subordinate judiciary being under the control of the Executive.

The tendency of the executive to regard the judiciary as a sort of obstruction to their activities is apparent from the manner in which during the War period the executive have on occasions acted. Their action cannot but lower the position and prestige of the judiciary. In several cases, the executive, after having prosecuted people under the ordinary law and failed to secure a conviction, have resorted to the Defence of India Rules to put the acquitted persons in prison.

In the early part of 1943, some of the people who were tried in the Sessions Court of Thana and acquitted by the Judge agreeing with the jury, were re-arrested by the police under the Defence of India Rules as soon as they emerged from the Court House. Similarly in Bombay, a number of persons who were acquitted by a Special Tribunal presided over by Mr. Justice Lokur, were immediately arrested again

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under the Defence of India Rules. In a trial held in the Criminal Sessions in Bombay, Mr. Justice Rajadhyaksha and the jury acquitted the accused but he was re-arrested under the Defence of India Rules as soon as he came out of the Court. Similar instances have occurred in other presidencies also. Cases of this sort tend to bring the administration of justice into contempt. It also lessens the sense of responsibility in the executive, who are naturally encouraged to launch prosecutions on insufficient evidence because they think that if the Court does not convict the accused they can still put him in prison indefinitely under the Defence of India Rules. In this connection, the utterance of the Chief Justice of the Allahabad High Court is significant. He is reported to have said that the Defence of India Rules had paralysed the High Court and that in the particular instance of Mr. Baijnath, a leading pleader of Agra, who was appearing for many political detenus, he felt that the police had thought it best to get the lawyer behind prison bars. The Chief Justice's feeling may be right or wrong, but it indicates what the judiciary feel regarding the action of the executive.

CONTEMPT OF COURT

UNDER clause 15 of the Letters Patent of the Bombay High Court, no appeal is allowed against any judgment passed by a single Judge in the exercise of his criminal jurisdiction. With regard to cases of contempt of court, a distinction is made between contempts of a civil nature and contempts of a criminal nature. Disobedience by a party to a suit, of the orders or injunction of a Court is considered contempt of a civil nature. On the other hand, contempt of court committed by a stranger to any suit or proceeding by reason of such stranger interfering with the process of the Court as well as any act committed by a party to a proceeding or by a stranger which would bring the administration of justice into scorn is considered contempt of a criminal nature.

With regard to contempts of the second character, there is no appeal against the orders of a single judge in the High Court and the only remedy to the person affected is an appeal to the Privy Council after obtaining the necessary certificate from the Appellate Bench. This legal position works very harshly in some cases.

I remember one case of such hardship in which I appeared for the alleged offender. A woman had bought a property at Lonavla at a public auction held by the Subordinate Judge's Court at Poona in execution of a mortgagee's decree and the woman having paid the purchase money was put in possession of the property. She was in such possession for a considerable time. Later, a suit was filed in the High Court for the administration of the estate of a deceased person and this property was mentioned as forming part of that estate by the parties to that suit. The Court appointed a Receiver of all the properties including this particular property at Lonavla. The Receiver's agent

went to Lonavla to take possession of the property and in the absence of the ostensible owner, obtained from the *mali* the key of the bungalow, opened it and entered into possession and put his own lock on it. When the woman after a few days went to Lonavla and was told by the *mali* what had happened, she removed the lock put by the Receiver's Agent and occupied the premises. On this, the Receiver obtained a rule from the Court against the woman for contempt of court. The solicitor of the woman instructed me to appear to show cause.

One of my contentions, if I had been heard, would have been that when the Receiver found that somebody else was in possession of the property claiming to be its owner, he had no right to take forcible possession of the premises but should have filed a suit to recover possession from the woman who was in possession. Whether my contention was right or wrong, I was entitled to be heard to show cause why my client should not be committed for contempt. When I appeared before the learned Judge and began to address him, he said: "I cannot hear you because your client is in contempt and your client must restore possession to the Receiver at once." In vain I argued that I had appeared before the Court to show cause why my client should not be committed for contempt and I was entitled to be heard to show that there was no contempt. The learned Judge prejudged that my client had committed contempt without giving me a hearing to show that there was no contempt. As there was no immediate remedy by appeal to the Appeal Court, my client had to surrender and give up her possession which she had obtained from the Poona Court as purchaser at a court sale.

In a recent case, a litigant who was arguing his own case, in answer to an observation by the opposing counsel that he (the litigant) was misleading the court, the litigant rejoined: "I do not keep anything back at all. My fault is that I disclose everything unlike members of the bar who

are in the habit of not doing so and misleading the court." A strong protest was made to this statement by the opposing counsel and the litigant immediately apologised and expressed his regret for having used the unfortunate expression in the heat of the argument. The litigant had also made observations derogatory to the Taxing Master. On the next day, the opposing counsel drew the attention of the court to the utterances of the litigant with regard to the Bar and the Advocate-General appeared and moved the Court to punish the appellant for contempt in using the language he had used regarding the Bar. The litigant again apologised for what he had said. At this stage, the question as to the words used regarding the Taxing Master was raised.

On the following day, the learned Judge held that both in his reflections on the Bar and on the Taxing Master the litigant was guilty and committed him to prison for three months and ordered him to pay a fine of Rs. 1,000. The next day, on the application of the litigant, the sentence of imprisonment was reduced to one of eight days. The litigant suffered this imprisonment as there was no appellate tribunal in the country to hear his appeal or let him out on bail. He had to apply to the Appeal Court for leave to appeal to the Privy Council, which was granted. The Privy Council allowed the appeal with costs and quashed the order of the learned Judge.

Cases like these show the desirability of allowing an appeal in all cases of contempt to the Appeal Court. This can be effected by an amendment of clause 15 of the Letters Patent by adding suitable words to make it clear that orders in contempt of court proceedings will not be deemed to be orders in the exercise of criminal jurisdiction for purposes of appeal. This can also be done by adding a section in the Contempt of Court Acts XII of 1926 and XII of 1937 allowing an appeal.

MANAGING CLERKS

When I began to practise on the Original Side, I came in contact with a class of Managing Clerks in Attorneys' Offices of those days. There was Anandrao in the office of Little & Co., Narayen with Craigie Lynch and Owen, Entee with Crawford Bailey & Co., and Rustomji Sethna with Edlow, Gulabchand Wadia & Company. The last one was known in legal circles as Rustomji Macfarlane. The name of Macfarlane was applied to him because he was a favourite of Macfarlane who had founded the firm. The Managing Clerks of those days who had considerable knowledge of law and practice played an important part as many of the clients did not know English and required some one as an intermediary between them and the European Solicitors. This class of Managing Clerks made large fortunes. Their clients had even greater confidence in them than in their masters. With regard to one of them it was said that when any draft of a letter or pleading was made by any of the partners of the firm of Solicitors, the clients used to take the draft to the Managing Clerk for his approval and he in order to impress the clients, made alterations in various places in the draft, but there were standing instructions to the copyists or typists that the original draft was to be fair copied or typed without the alterations! This class of Managing Clerks has now disappeared.

LAW'S DELAYS

When I joined the Appellate Side bar in 1887 there was great congestion of work. Appeals did not come up for hearing till three or four years after they were admitted. I was told that in the time of Sir Michael Westropp, judgments in some important and complicated cases were delivered by him months after the hearing was finished. I had heard an amusing story in this connection. There was a Civil Revision application from a judgment of a Court of Small Causes in a mofussil town. The application was heard by Westropp Chief Justice and another judge and

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judgment was reserved. Judgment was never delivered and apparently everybody forgot all about the case. Sir Michael Westropp had retired and Sir Charles Sargent had succeeded him as Chief Justice. One day when the drawers of the Chief Justice's table were cleared, the papers of that revision application and a sheet of paper on which Westropp Chief Justice had written a few lines of the judgment he intended to deliver were found. On that, enquiries were made whether the Small Causes Court concerned desired the revision application to be disposed of. That court reported that all the parties in that case were dead and therefore nothing further was necessary to be done.

In the Dakore Temple case the appeal against the decree of the District Judge of Ahmedabad was filed in 1883. The appeal came on for hearing and was decided in the middle of 1887. An appeal to the Privy Council was filed in the latter part of 1887. The preparation of the printed record to be sent to the Privy Council took several years and the appeal was heard by the Privy Council some time in May 1899. Thus four years elapsed between the filing of the appeal and its hearing by the High Court and twelve years elapsed between the decision of the High Court and the hearing of the appeal by the Privy Council.

It is very aptly said that justice delayed is justice denied. This is illustrated by the manner in which criminal cases are dealt with in the courts of Presidency Magistrates in Bombay. A contested case is never heard from day to day but is heard at considerable intervals and even then only a fraction of a day is given to each hearing. The result is that cases drag on for many months and some times for some years. One can well imagine the trouble and anxiety that the accused have to suffer as well as the heavy burden of costs that falls upon them by way of counsel's or pleader's fees. The hearing of cases by dribblets also results in further prolonging the disposal of cases, because when a week or even a longer period elapses

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between various hearings, some time is always lost in recalling what had gone before. It is also unfair to the trying magistrate himself that he has to remember and carry in his mind the facts of several cases that sometimes drag on for weeks and months.

In a recent case, the hearing began in August 1942 and ended in October 1944, that is it took more than two years. The case was taken up during this interval on 116 different occasions and took in all 160 hours. Only a few hearings occupied two hours at a time while on many occasions, the case was heard only for one hour and a half or one hour and sometimes for even half an hour or quarter of an hour. The accused was defended by lawyers and the prosecution had engaged special counsel to whom substantial fees had to be paid. Both the prosecution and the accused must have spent many thousands of rupees on this case. In addition, one can well imagine the anxiety and suspense that the accused had to suffer for a period of two years and a half at the end of which he was acquitted. If the case had been heard by the magistrate for full five hours from day to day, it would have taken 32 days and perhaps a shorter period.

The hearing of what is known as the House Collapse Case (King Emperor vs H. A. Noorani & Co) began in October 1943 and ended in March 1945 thus occupying 18 months.

Another case in which the whole future of a public servant is involved has been going for an equally long period and is still unfinished. It is indeed cruel to inflict on the accused the mental anguish and anxiety that he must be suffering, not to speak of the enormous heavy cost of defending himself.

A simple case of hoarding grain in contravention of the Ordinance in that behalf and in which there was no much dispute as to facts lasted from September 1943 to July 1944.

LAWS DELAYS

It is not at all unusual that even ordinary cases of cheating, breach of trust, etc., which if taken up from day to day, would last for two or three days, hang on for months and months. There is no reason why by a proper distribution of work, it should not be possible when once a case is called on to take it from day to day and finish it. I have never been able to understand why this cannot be done.

It is said that magistrates have to take up every day what are called miscellaneous police cases. There are 13 stipendiary Presidency Magistrates and a host of honorary Magistrates. There should be no difficulty in the way of so distributing the work between the various courts as to make it possible for cases being heard from day to day till they are finished. Whatever the reasons or difficulties there may be, preventing cases from being taken up from day to day, they must any how be surmounted in the interests of the general public. On several occasions, the High Court have recorded their disapproval of the delays in the disposal of criminal cases in Bombay. It is high time that both government and the High Court should take immediate steps to overhaul the whole system of criminal justice in Bombay and put an end to the scandal of criminal cases lasting for several months and as in some of the cases above referred to, for years.

3. - - THE BOMBAY MUNICIPAL CORPORATION

I STOOD for election to the Bombay Municipal Corporation at the general election held in 1892 from the Girgaum Ward and was elected. At the next general election, I lost the seat. On a casual vacancy occurring among the members elected by the Justices of the Peace, I stood and was elected in 1899. Subsequently, I represented the University of Bombay in the Municipal Corporation right up to 1920 when I resigned on my accepting the office of Judge of the Bombay High Court.

When I got more busy on the Original Side of the High Court it became difficult to attend the meetings of the Corporation which ordinarily began at 3 p.m. on Mondays and Thursdays. I therefore attended the meetings of the Corporation whenever it was possible to do so. Under these circumstances, I would not have stuck to my seat in the Corporation but for my great interest in the work of the Schools Committee whose meetings were always held in the evening.

In the year 1907, a determined effort was made by a certain coterie to oust Pherozechah from the Corporation and at the general election by Justices, by powerful canvassing, they succeeded in doing so. Their object in doing this, they professed, was to break what they called the domination of the Corporation by Pherozechah. The result was that Pherozechah acquired much greater influence not only in the Corporation and the City of Bombay but throughout India. The matter went to the Small Causes Court and the High Court, and ultimately Pherozechah was declared elected. Full particulars of this heated controversy which

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caused unusual excitement in Bombay for many months will be found, in the "Caucus Case" under the heading "Some Cases," in Part "The Law."

PRINCE OF WALES' VISIT TO INDIA IN 1905

It was announced that the Prince and the Princess of Wales would be visiting India in November 1905. When the election of the President of the Bombay Municipal Corporation was to be made in the beginning of April 1905, the members of the Corporation felt that the City on the occasion of the Royal visit should be represented by Pherozeshah Mehta and he was enthusiastically elected as President by the unanimous vote of the House. The Prince was to land on November 9, and the Corporation resolved to present an address to Their Royal Highnesses at the Bunder. Pherozeshah as President was very particular that the position of the Corporation as representing the City should be fully recognised. When in 1875, the then Prince of Wales came to Bombay, the Chairman of the Corporation had been given a prominent place in the reception of His Royal Highness on the steps of the Apollo Bunder.

On this occasion, the Municipal Secretary under instructions of Pherozeshah invited the attention of Government to the said precedent and expressed the hope that it would be followed. Government, however, took no notice of this communication and a Press Note was issued about the Reception of the Prince in which the President of the Corporation, the Municipal Commissioner and the Sheriff of Bombay were not included among those who were to receive Their Royal Highnesses at the landing steps at Apollo Bunder.

There was great indignation aroused at this treatment and the Corporation felt that a deliberate slight had been offered to it and through it to the City. An informal meeting of the members of the Corporation was held and it was resolved to convey to Government the feelings which their

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action had aroused. The situation was tense and there was considerable speculation as to what would happen if Government did not pay heed to the representation of the Corporation. Some members threatened that when the Corporation met, at the Bunder to present an address to the Royal Personages, they would propose an adjournment of the meeting. On November 8, a day previous to the arrival of Their Royal Highnesses, another informal meeting of the Corporation was called for that evening to consider the situation. In the afternoon, Mr. Edgerley, the then Chief Secretary to the Bombay Government, called on Pheroze-shah at his residence to discuss the matter. Pheroze-shah at that interview plainly gave Mr. Edgerley to understand the serious consequences that would follow if the wishes of the Corporation were disregarded. A little before the appointed time for the meeting, a message came announcing the capitulation of Government. Pheroze-shah at the informal meeting tactfully soothed ruffled feelings and the incident ended.

KING'S VISIT

It was announced early in 1912, that the late King George V and Queen Mary were to come to India and a grand Durbar was to be held at Delhi where King George was to be proclaimed Emperor of India. As the President of the Bombay Municipal Corporation would in the ordinary course read the address of welcome to the Royal visitors on behalf of the Corporation, there was considerable discussion among the members of the Corporation as to who should be elected President for the year 1912-1913.

According to the usual practice, it was the turn of a Hindu to be elected as President, but many members thought that this convention should give way under the peculiar circumstances of that year, and that on this unique occasion, Pheroze-shah should again represent the City and he agreed to stand for election. Manmohandas Ramji put himself forward as the Hindu candidate. Sir Sasson J. David having the ambition to read the address to the King

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also put himself forward as a candidate and got support from officials and members of the European community. A keen contest followed and the result was that Pherozechah got 27 votes, David 26 and Manmohandas 12. This was the fourth time that Pherozechah became President of the Corporation. The reactionary element discomfited by this result, later started an intrigue to diminish to a certain extent the glory that had come to Pherozechah by this election. When the time for the arrival of the King approached, the idea was started that an address should be voted to the King by a public meeting of the citizens of Bombay and that such citizens' address should be presented at the Apollo Bunder and that the Corporation address should be received later at the Corporation Hall. At a luncheon party given by Shapoorji Bharucha who was then the Sheriff of Bombay at which I was present, he said that he had an interview with the Governor and had received from him "a mandate" that a public meeting should be called for the above-mentioned purpose. Pherozechah and others who were at the lunch entirely disapproved of this move to put the Corporation in the background. It was conveyed to the authorities that if this move of the citizens' address was persisted in and the position of the Corporation as representing the City was attempted to be undermined, the Corporation would be driven to decide to give no address to the King. This threat brought those who were sponsoring this sinister move to their senses and Pherozechah and the members of the Corporation presented the Address of Welcome to the King at the Apollo Bunder.

SCHOOLS COMMITTEE

Under the Bombay Municipal Act of 1888, the cost of primary education in the City of Bombay was borne in certain proportions by the Corporation and the Government of Bombay, the Corporation paying such portion of the maintenance of the police in the City as Government from time to time determined. In practice the result was that the Corporation were made to bear a disproportionately high

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percentage of the heavy cost of the police, while Government contributed comparatively lightly towards the expenditure on education.

As the cost of primary education was shared by the Corporation and Government, the administration of the primary schools in Bombay was placed in the hands of what was then called the Joint Schools Committee. On this Committee, the Corporation was represented by some members of the Corporation elected for the purpose and others were nominated by Government. The Corporation on the other hand had no control over the police although they bore greater part of its cost.

I was at the beginning nominated by Government to the Joint Schools Committee. The Corporation were making persistent representations for the removal of the burden of police charges and ultimately by the enactment of the Police Charges Act of 1907 the Corporation took over the entire cost of primary education in the City and the Government took over the burden of the entire cost of the police. Thereafter, the control of primary education in the City was placed in the hands of the Schools Committee which was entirely elected by the Corporation.

When this change took place, the Corporation elected me to the Committee and I was re-elected from time to time till 1920, when I resigned my seat on the Corporation on being appointed a Judge of the High Court. In 1903 I was elected Chairman of the Schools Committee and was re-elected year after year for an unbroken period of 17 years. During that period, many reforms were introduced and several good buildings were erected for housing some of the schools, Government contributing partially to the cost. When Gokhale introduced in the Imperial Legislative Council a bill for free and compulsory primary education, the opinion of the Corporation was invited and the Committee appointed to consider the matter with me as one of the members pronounced strongly in favour of it.

GORDHANDAS SUNDERDAS MEDICAL COLLEGE

By a Consent Decree in the suit filed by the Advocate-General against Gangabai, widow of Gordhandas Sunderdas and Chaturbhuj Gordhandas, the adopted son of Gordhandas Sunderdas, particulars of which are given under the head "Some Cases" in Part "The Law" a sum of Rs. 20 lakhs was set apart for charities. Out of this sum, after making provision for the specific charities mentioned in the will of Gordhandas, a balance of Rs. 14 lakhs was available for founding any charity at the discretion of the trustees who were appointed by the Court. I was one of the trustees so appointed and have ever since continued to be a trustee and also Chairman of the Board of Trustees.

The trustees in consultation with the Advocate-General decided to utilise the surplus amount for the foundation of a medical college in the City of Bombay. For many years, the Grant Medical College and the J. J. Hospital had been the preserves of the I. M. S. and specially of the European members thereof, and the independent Indian medical profession in the City had been excluded from the staff of the College and Hospital. There was considerable agitation for a long time against this monopoly. The late Dr. K. N. Bahadurji had taken the lead in the agitation against the exclusion of the Indian medical profession. After the appointment of Trustees by the Court, I discussed the matter with Pherozechah Mehta and he suggested that an offer of an endowment should be made to the Bombay Municipal Corporation for the foundation of a college to be attached to the K.E.M. Hospital which was about to be established, one of the conditions of the offer being that the staff of the College should be recruited entirely from the independent Indian medical practitioners. If this condition was accepted, it would automatically follow that the staff of the Hospital would have to be chosen from the independent Indian medical practitioners, because the members of the Hospital staff would be also professors of the College.

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D. N. Bahadurji was then acting as Advocate-General and he and the trustees by the letter of Messrs. Payne & Co., dated October 12, 1915 made the offer as above. The Corporation welcomed the offer and referred the matter to a Committee. In the Committee there was considerable discussion over the condition that had been laid down about the staff of the College. There were some members who took the view that the restriction imposed would disable the Corporation from obtaining the best qualified staff. The majority of the Committee, however, was in favour of accepting the condition and they so decided. A few days after this decision was arrived at, some members of the Committee supported by Mr. Cadell, the Commissioner, called a fresh meeting of the Committee to reconsider this point. I could not be present at that meeting as I had gone out of Bombay for professional work. In my absence, the Committee by a narrow majority, reversed their former decision in favour of the condition. On my return I arranged for a fresh meeting of the Committee and in the result the original view was accepted. Some dissenting minutes were appended to the report. Major Liston, the head of the Haffkine Institute was one of the chief opponents. I approached the Director-General of Medical Services and asked him to use his influence with Major Liston. He wrote to Liston sending me a copy of his letter. The letter ran as follows:

Camp Delhi, 3rd February, 1916.

My dear Liston,

Your letter of the 24th January. I think that the remarks which are alluded to by the President of the Bombay Medical Union in his letter must be those made by me in my speech in the Imperial Legislative Council on the 17th of March 1911, a copy of which I attach for your information. If you really want my advice with reference to the attitude which you should take up in the matter, I should strongly advise you not

to oppose the founding of the new Medical School in Bombay, and I would suggest that you gracefully withdraw from the position you have already taken up. Personally I am very strongly of opinion that the establishment of independent medical colleges and schools in Bombay and Calcutta would be extremely useful from every point of view, and I think it is a mistaken and short-sighted policy to oppose them. I am retaining the various enclosures to your letter in view of the possibility of the case being referred to me officially later on.

With kind regards,

Yours sincerely,
(Sd.) C. P. LUKIS

After the acceptance of the offer by the Corporation, it had to be incorporated in the scheme for the utilisation of the sum set apart for charity under the consent decree, and the scheme had to be submitted to the Court for sanction. By this time, Strangman, the permanent Advocate-General, had returned from leave and he took up the cudgels against the condition of confining the staff to the independent Indian medical profession. He spoke to me about it and said that he meant to put before the Court, the consideration whether it was desirable to prevent the Corporation from availing themselves of the services of highly qualified European medical men for appointment as professors. I told him how strong the feeling was in the public mind about the I.M.S. monopoly and added that if he raised the question before the Court, I would put before the Court all the considerations regarding the grievance that the public had for many years about the positive discouragement to the Indian medical profession in the working of the Grant Medical College and the Sir J. J. Hospital and the consequent desirability of this condition. On second thought, Strangman wisely did not raise the question and the scheme was sanctioned by the Court. The result has been that two

splendid institutions, the K.E.M. Hospital and the G. S. Medical College, have been working for many years with a highly qualified Indian personnel.

MUNICIPAL SUIT AGAINST GOVERNMENT

In the years 1916 and 1917, the Government of Bombay realising that primary education in the City of Bombay could not be fully developed out of the resources of the Municipality to an extent befitting the City, entered into correspondence with the Bombay Municipal Corporation with the object of bringing such education to a stage when a scheme of free and compulsory primary education in the City of Bombay might be carried out. Ibrahim Rahimtulla was then in charge of the education portfolio in the Government of Bombay. I was at the time Chairman of the Schools Committee and the Corporation acting on the Committee's advice welcomed the proposals of Government. As a result of the negotiations between the Government of Bombay and the Corporation, Government by a letter addressed on their behalf by the Secretary to Government, offered to bear one-half of the additional expenditure over the actual expenditure for 1917-1918, involved by the introduction of free and compulsory primary education in certain wards. The Municipality through its President accepted this offer with thanks.

In pursuance of this agreement, the Municipality spent large sums on expanding primary education in the City and Government paid to the Municipality one-half share of the additional expenditure in accordance with the bills submitted to them, for three years ending March 1921. Thereafter the Government of Bombay made some provisional payments towards the said expenditure but did not pay the full amount agreed upon and the sum remaining-unpaid upto 1923-4 amounted to a little over two lakhs of rupees. The Corporation thereupon sued the Secretary of State for India for the recovery of the arrears, reserving

their right to claim the amounts due for subsequent years. Government put up various defences, among them being the plea that there was no valid enforceable contract so far as Government were concerned. The letter of Government agreeing to the arrangement was signed by the Secretary to the Government in the Education Department, who, it was contended, had no authority under the Government of India Act read with the resolution of the Government of India in that behalf, to bind the Secretary of State. It was further suggested that the President of the Corporation who had assented to the arrangement on behalf of the Corporation could not in law bind the Corporation as any arrangement on the Corporation's behalf was valid only when signed by the Municipal Commissioner. On these technical grounds, the claim of the Corporation was dismissed. In delivering judgment Justice Mirza said:—

“The plaintiffs seem to have a moral justification on their side in complaining of Government's conduct in taking advantage of a legal technicality in their favour to avoid an obligation they had deliberately undertaken in regard to the spread of primary education in the city of Bombay.”

Regarding other allegations of Government that the Municipality had not properly carried out their part of the contract the learned Judge said:

“I do not consider that these matters, assuming they are proved, would morally justify Government in acting as they have done towards the Municipality. Although I sympathise with the Municipality on the moral aspect of this dispute, I must recognise that this is not a Court of Morals but a Court of Law.”

APPRECIATION BY THE CORPORATION

On my accepting the judgeship of the Bombay High Court in June 1920, I sent in my resignation of the membership of the Bombay Municipal Corporation. The Cor

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poration in accepting the same passed the following resolution:

"That in parting with the Hon'ble Sir Chimanlal H. Setalvad, the Corporation desire to place on record their high appreciation of the eminent and valuable services rendered by him during his long and distinguished career of 25 years, especially as a member of the Schools Committee for 23 years, and its Chairman for 18 years. His services in the cause of primary education in the City were unique and were characterised by strenuous study and devotion entailing great self-sacrifice.

"That a copy of the resolution be forwarded to Sir Chimanlal with the best thanks of the Corporation for his brilliant services to the City, and with an expression of the Corporation's gratification for his appointment as a judge of His Majesty's High Court in Bombay and with an expression of their sincere wishes that in this new sphere of activity he will achieve a marked success and win the confidence of the public."

PART
4

UNIVERSITY OF
BOMBAY

4. - - UNIVERSITY OF BOMBAY

IN the year 1893, Government announced that two Fellows would be nominated to the University Senate on the recommendation of Registered University Graduates following on an election to be held for the purpose by such graduates. In 1895, I was recommended under those Rules and was nominated a Fellow. This system of nomination of two Fellows on the recommendation of graduates remained in force till the University Act of 1904 when the registered graduates were given the right of direct election to the Senate. From 1895 till 1924 I continued to be elected from time to time by the graduates. Since the year 1924 I have been nominated by the Chancellor. In the year 1899 I was elected Syndic in law. Subsequently for some years, I was elected Syndic in Arts. Ever since 1899, I continued to be a member of the Syndicate till 1929. I was nominated Vice-Chancellor in the year 1917 and held that office for a continuous period of twelve years.

More than once I asked Government to relieve me as the burden of office along with my professional and other engagements was becoming too heavy but I was pressed to continue. This year I will complete fifty years as a Fellow of the Bombay University. From 1903 to 1915 I represented the University in the Bombay Legislative Council. How officialdom opposed my election in 1903 but miserably failed is narrated in the part entitled "Legislatures".

UNIVERSITY ACT 1904

Lord Curzon took office as Viceroy and Governor-General of India early in 1899. His reforming zeal was directed to the educational system in India. He was strongly in opposition to the policy of Lord Macaulay and Sir Charles Wood (afterwards Lord Halifax) with regard

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to western education. He found that the Indian Universities were mainly affiliating and examining Universities on the model of the London University and were not residential and teaching Universities like Oxford and Cambridge. He was also persuaded to think that the control of the Universities had passed into the hands of politicians and that it was necessary in the interests of education that the control should be placed in the hands of educational experts. In 1901-2, he appointed a Commission, to inquire into the system of University education obtaining in India; and based on the Report of that Commission a Bill for remodelling the Indian Universities was introduced in the Imperial Legislative Council in the session of March 1904. The Bill in effect tightened official control on the working of the Universities and evoked universal opposition from the Universities and the educated classes on the ground that the effect of the bill would be to convert the Universities into departments of the State. Mr. G. K. Gokhale who was then a member of the Imperial Council very ably put forward this view.

Dr. Ramkrishna Bhandarkar who had been specially nominated to the Imperial Legislative Council for the purpose of this Bill, voiced and supported the official view. He went to the length of saying that when he heard of the provisions of the Bill he said to himself: "The day of deliverance has come." According to him, the control of the University should be almost wholly in the hands of professors and teachers. The theory that a University can properly function only if its control is vested almost entirely in the hands of educationists has, however, been exploded. When the University of London was established, the Supreme Governing body was modelled largely on the type of the constitutions of Oxford and Cambridge and the control came to be vested in teachers and graduates. The Royal Commission on the University of London came to the deliberate conclusion that this was a mistake. In their Report, Lord

Haldane and his colleagues, after going exhaustively into the question of the governance of the University observed as follows:

"The supreme governing body or court must, in our opinion, be of different constitution from the present senate which is modelled largely on the type of constitutions of elder universities. These universities are not dependent on public funds for their maintenance and their history makes their government by teachers and graduates reasonable or at least explains it. The city university is an altogether different case and we agree with the report of the Academic Council in the belief that the modern city university cannot flourish if the population it mainly serves is indifferent to its welfare."

The report of the Academic Council also said: "London will not regard the University of London as an integral part of the city until the university is willing to entrust its supreme guidance to a body composed mainly of citizens."

With regard also to the executive body corresponding to Syndicates of the Indian Universities, the Commission emphatically expressed the view that it "should not as to any large part consist of teachers" and that "the teachers who have seats upon it should not be so elected as to represent particular studies or particular institutions but merely to ensure a mutual understanding between the men of affairs and the men of learning." They further recommended that all the members of the executive body should as far as possible be appointed for their personal qualifications as men of business knowledge and administrative capacity and that the teachers should not determine the educational policy of the university though that policy should be determined in the light of the expert advice which the teachers are peculiarly fitted to give.

The Bill was, however, passed into law.

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The old senates were swept away and new senates of 100 in the older universities were created by the Act, 80 members of whom were to be nominated by government, 10 elected by registered graduates and 10 by the faculties.

Under the transitory provisions of the Act, the senate had to elect a provisional syndicate under the directions of the Chancellor. The Chancellor of the University of Bombay, Sir George Clarke directed that the Syndics in Arts be elected by the Fellows named by him for that purpose. Similarly he gave directions about the election of Law Syndics by certain Fellows and also gave directions with regard to other faculties.

In doing this the Chancellor excluded from the Arts Fellows' list, all those who had law degrees in addition to their Arts degrees and confined them only to the electorate for the Law Syndics. Some of the persons so excluded from voting for the election of Arts Syndics were men who held high degrees in Arts and had in the past functioned as Syndics in Arts. I myself had been a Syndic in Arts for many years but was excluded from the Arts electorate. While persons holding Arts degrees were thus excluded from the Arts electorate, Fellows who had no academic qualifications were put in the Arts electorate. This method of electing the provisional Syndicate was illegal. Under the terms of the transitory provisions all Syndics had to be elected by the whole Senate.

When the Fellows who were under the Chancellor's order to elect the Law Syndics met, it was known that the point of illegality would be raised. Ordinarily, members of the Executive Council who were ex-officio Fellows did not attend University meetings. Pherozeshah Mehta was the most senior member barring the members of the Executive Council and he would have presided. Knowing that this point of illegality was going to be taken, Sir William Edgerley, Member of Council, came to the meeting and presided. As soon as the proceedings began, I rose to a point of

order and submitted that the election merely by the Fellows named by the Chancellor for the election of the Law Syndics was illegal and should not, therefore, be proceeded with. As soon as I raised this point, Mr. Justice Tyabji who was present at the meeting promptly left the meeting. He was quite right in doing so as the matter might come before him as a judge. Edgerley, as was expected, overruled my point of order and Chandavarkar and another Fellow were elected Syndics in Law. Syndics for other faculties were also elected by Fellows named for the purpose by the Chancellor and not by the whole Senate as provided in the Act.

A suit was then filed by Pherozeshah Mehta, myself and nine other Fellows against Dr. Mackichan, Chandavarkar and 10 others who were elected members of the provisional syndicate for declaration that their election was illegal and restraining them from acting as Syndics and an *interim* injunction was sought. Inverarity and Lowndes appeared for the plaintiffs and Raikes, acting Advocate-General, appeared for the defendants. On the motion for *interim* injunction, Raikes for the defendants gave the undertaking that the defendants would not do any acts or things beyond or outside of the internal management and working of the University of Bombay. On this undertaking an early date for the hearing of the suit was fixed. Lord Curzon's Government, thereupon, introduced a bill and passed an Act validating all directions, declarations and orders made under the Act and also the bodies corporate and provisional syndicates constituted and appointed in accordance with such directions. On the passing of the Act, the suit lapsed, each party bearing its own cost.

GOVERNMENT INTERFERENCE IN THE AUTONOMY OF THE UNIVERSITY

During the Governorship of Sir George Clarke (afterwards Lord Sydenham), his Government addressed to the University a series of suggestions with regard to examinations and curricula. His Government wanted the abolition

of the matriculation examination and the removal of history from the compulsory B.A. course. They also wanted the removal of some works of Burke and Bacon from the courses. The idea behind it was that the Governor believed that the study of English history and works of Burke and Bacon made educated Indians disloyal. What a fall this from the noble and liberal views which animated the minute of Lord Macaulay when he said:

"It may be that the public mind of India may expand under our system till it has outgrown that system; that by good Government we may educate our subjects into a capacity for better Government; that having become instructed in European knowledge, they may in some future age, demand European institutions. Whether such a day will ever come I know not. But never will I attempt to avert or to retard it. Whenever it comes, it will be the proudest day in English history. To have found a great people sunk in the lowest depths of slavery and superstition, to have so ruled them as to have made them desirous and capable of all the privileges of citizens, would indeed be a title to glory all our own."

When the matter came up before the Senate, after a long debate that body with only one dissentient agreed to a revised compulsory course for the B.A. degree in which English history was retained. When the regulations went up to Government for sanction, Government declined to acquiesce in the decision of the Senate and ordered Mr. Sharp, the D. P. I. to give notice of a proposition upsetting the previous decision of the Senate and removing history from the B. A. course. The poor D. P. I. who had at one time associated himself with the retention of history had under orders to move for its deletion. It was openly asserted at the meeting of the Senate and could not be denied, that a whip was sent round to Government officials to be present and to vote in support of the abolition of history.